

PROJECT MANUAL

RED CLAY CONSOLIDATED SCHOOL DISTRICT

STADIUM BLEACHER RENOVATION

CONRAD SCHOOLS OF SCIENCE

Bid #13-06-04

THIS COPY IS FOR INFORMATION ONLY.
YOU MUST REQUEST THE PROPSAL
FROM THE DISTRICT IN ORDER TO
SUBMIT A BID

CONRAD SCHOOLS OF SCIENCE
201 JACKSON AVENUE
WILMINGTON, DELAWARE 19804
Monday, May 20, 2013

NOT FOR BIDDING

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Advertisement Dates: News Journal - May 10, 2013 & May 17, 2013

**INVITATION TO BID
RED CLAY CONSOLIDATED SCHOOL DISTRICT
CONRAD SCHOOLS OF SCIENCE STADIUM BLEACHER RENOVATION**

Bids will be received by the Red Clay Consolidated School District Office of Facilities and Maintenance at 1798 Limestone Road, Wilmington, DE 19804 for Bid #13-06-04– CONRAD SCHOOLS OF SCIENCE STADIUM BLEACHER RENOVATION – on Tuesday, June 4, 2013 @ 2:00 PM local time.

There will be a **mandatory** pre-bid meeting on Monday, May 20th, 2013 @ 10:00 AM local time at the Conrad Schools of Science at 201 Jackson Avenue, Wilmington, DE 19804. Check in at the main office upon arrival. Bidding documents will be available on Monday, May 20, 2013 and thereafter from Century Engineering, 4134 N DuPont Highway, Dover, DE 19901, telephone (302) 734-9188, facsimile: (302) 734-4589

For further information, please contact: J.D. Bartlett, Century Engineering, Inc., 4134 N. DuPont Highway, Dover, DE 19901, telephone: (302) 734-9188, facsimile: (302) 734-4589.

Prevailing Wage Rates, as described by Delaware Law, must be adhered to where applicable.

Proposals will be publicly opened and read at the Red Clay Consolidated School District Office of Facilities and Maintenance, 1798 Limestone Road, Wilmington, DE 19804, telephone (302) 892-3284 on the date and time indicated. Time and place for opening of bids may be extended from that described above on not less than two calendar days notice by certified delivery, facsimile machine, or other verifiable electronic means to those bidders who obtained copies of the plans and specifications.

Proposals may not be withdrawn for a period of sixty (60) calendar days after the scheduled closing time for receipt of bids.

Each bidder must deposit with his bid, security in an amount of not less than 10% of his base bid plus all additive alternates, in the form and subject to the conditions provided in the specifications.

The Red Clay Consolidated School District reserves the right to waive irregularities and to reject any and all bids.

Marcin Michalski
Manager of Facilities and Maintenance
Red Clay Consolidated School District
1798 Limestone Road
Wilmington, DE 19804
(302) 892-3284

END OF SECTION 00010

NOT FOR BIDDING

INSTRUCTIONS TO BIDDERS

1.1 CONSTRUCTION SITE PROCEDURES

- A. The purpose of this section is to provide an understanding of basic rules and procedures which are to be used by construction contractors and subcontractors during construction. Personnel must always work within the safety regulations imposed by the National Institute for Occupational Safety and Health (NIOSH). As such, each Contractor shall provide at least one competent individual; as determined by OSHA; on site while work is in progress. Each Contractor shall provide all safety training, first aid, fire protection, fall protection, fixed or portable luminaires for special illumination, power extension cords, P.P.E. ,housekeeping, notifications, plans regular inspections, record keeping, and all other items required by OSHA 1926; including all applicable subparts; for the proper and safe execution of the work. Each subcontractor shall fully cooperate with the Project General Contractor whom shall be designated as the "Controlling Employer" for the project and work site. As the "Controlling Employer" the Project General Contractor shall monitor the other Contractors for their compliance with OSHA 1926 including all applicable sub parts governing their work. Each Trade Contractor shall provide all items necessary for compliance with OSHA 1926 including all applicable sub parts. In compliance with EPA requirements, AHERA Regulations found in 40 CFR 763.84, states that all contractors and/or individuals performing work in the school must review the current AHERA report to familiarize themselves with known asbestos materials located in the school, prior to performance of any work within the facility. Every worker on the site shall complete a form of acknowledgment.
- B. In addition to those regulations, the Red Clay Consolidated School District requires that all workers comply with the following:
1. There must always be an isolation barrier between construction work and students. This isolation barrier may include fencing, temporary partitions, or existing walls.
 2. Construction equipment and materials must be kept in the construction staging area. This area is removed from student activities and is to be secured with an isolation barrier.
 3. If feasible, a specific area is to be identified for construction personnel parking. Contractors also are directed to arrive and leave the school ground at times other than school beginning and dismissal times.
 4. Delivery vehicles are not to move across the school campus when students are outside. When crossing a campus, vehicles are to be accompanied by an employee on foot to act as additional safety.
 5. Smoking or the consumption of alcoholic beverages is not allowed on the school grounds.
 6. General contractor will provide temporary restroom facilities for the project. Construction personnel are not permitted to use student restrooms.
 7. Contractors are prohibited from allowing school personnel or students into construction area.

8. Construction contracts require dust mitigation and removal of construction debris in compliance with state and local requirements.
9. Contractors must provide advance notice to school personnel and all other required State and/or Local jurisdictions should it become necessary to temporarily disrupt utility, fire safety, communication, or HVAC systems.
10. All contractor's personnel must wear I.D. badges approved by the School District at all times when on the construction site.
11. Contractors shall ensure that school activities are not disrupted by construction activities including noise and odor produced by those activities.

1.2 DOCUMENTS

- A. Prospective bidders may obtain contract documents, at the **mandatory** pre-bid meeting on Monday, May 20th, 2013 @ 10:00 AM local time at the Conrad Schools of Science at 201 Jackson Avenue, Wilmington, DE 19804.

1.3 PRE-BID MEETING

- A. A pre-bid meeting will be held at a time and place named in the Invitation to Bid. At the meeting, the participants will review the scope of work and establish a listing of all subcontractor categories to be included in the bids. (See Item 1.9 of this Section).
- B. Attendance at this meeting is mandatory for all prospective bidders, and will be a pre-requisite for submitting a bid.

1.4 EXAMINATION OF SITE, DOCUMENTS, ETC.

- A. Before submitting bids, bidders shall fully inform themselves of the nature of the work by personal examination of the site, the drawings, and the specifications or by such other means as they may prefer to consider necessary as to matters, conditions and considerations bearing on or in any way affecting the preparation of their proposal and the contract. They shall not at any time after submission of the proposal, dispute or complain of such drawing or specifications and general conditions, nor assert that there is any misunderstanding in regard to the location, extent or nature of the work to be performed. The successful bidder, by the execution of the contract, shall in no way be relieved of any obligation under it due to his failure to examine the documents or to visit the site and acquaint himself with the conditions there existing and the owner will be justified in rejecting any claim based on facts regarding which the bidder should have been on notice as a result thereof.

1.5 DOCUMENT INTERPRETATIONS OR QUESTIONS

- A. No oral interpretations will be made to any bidder as to the meaning of the bidding documents or any part thereof. Every request for such an interpretation shall be made in writing to the owner's representative. Any inquiry received seven (7) days or more prior to the bid opening date will be given consideration. Every interpretation to a bidder will be made in the form of an Addendum to the bidding documents. It shall be the bidder's responsibility to make inquiry as to the Addenda issued. All such Addenda shall become a part of the contract and all bidders shall be bound by such Addenda. Bidders shall acknowledge receipt of all addenda on the bid form.

1.6 SUBSTITUTION PROCEDURE

- A. The contractor may submit to the Architect/Engineer a written request for a product or system other than that that specifically referenced or other than the manufacturer(s) specified to be considered as an equal or substitute to a product or system specified in these documents.
- B. Such a request for consideration of a substitution must be received by the Architect/Engineer in writing at least seven (7) days in advance of the date of the bid opening.
- C. Reference in the drawings and/or specifications to any article, device, product, material, fixture form or type of construction by trade name, manufacturer's name, and/or catalog number are made to establish a standard of performance and quality; no such reference shall be construed as an attempt to limit competition. Partial submissions will not be accepted.

1.7 BIDDING PROCEDURE

- A. Bid shall be submitted on furnished bid form. State all amounts in both words and numerals. Write all signatures in longhand, without alterations or erasures. A bidder shall make no additional stipulations on the bid form nor qualify his bid by attachments or any other manner. Stipulations or qualifications may subject his bid to rejection.
- B. Include a sufficient amount in the bid to cover the cost of any and/or all work called for by any Addenda or other instructions issued during the bidding period. Such work will automatically become a part of the Contract. The bidder is responsible for acknowledging all Addenda issued by the Architect/Engineer. The acknowledgement list shall be submitted as part of the Bid Form, refer to Section 00300 – Bid Form.
- C. Each bidder shall include all unit cost items shown on the bid form; failure to comply may be cause for rejection. No segregated bids or assignments will be considered.
- D. In submitting this bid, it is understood that the right is reserved by the Owner to reject any and/or all bids and waive any informalities therein, and it is further agreed that this bid may not be withdrawn for a period of sixty (60) days from the opening thereof.

1.8 NON-COLLUSION STATEMENT

- A. Each bidder shall submit with his proposal a properly executed non-collusion statement.
- B. The District requires, as a condition precedent to acceptance of bids, a sworn statement executed by, or on behalf of, the persons, firm, association or corporation to whom such Contract is to be awarded, certifying that such person, firm, association or corporation has not, either directly or indirectly, entered into an agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with such contract. The form for this sworn statement is included in the proposal and must be properly executed and submitted with proposal in order to have the bid considered.

1.9 LISTING SUBCONTRACTORS

- A. The Bidder shall submit with his proposal a fully completed list of Sub-Contractors he intends to use on the project. The work must be awarded to the Sub-Contractors listed, and Sub-Contractors must be recognized in the trades for doing that specific type of work required. Sub-Contractors doing work requiring Stat or County license must possess this license in their own nature.
- B. The Subcontractor List must be filled in completely, with a name provide for each sub-contractor trade that is included in the bid documents. If a Contractor intends to perform the work of a listed trade using his own forces, then he must list himself as subcontractor for that trade. Failure to complete the Subcontractor list completely and correctly can result in the id being ruled non-responsive.
- C. The contractor shall perform with his/her own organization, work amounting to not less than twenty percent 20% of the total contract bid price, exclusive of General Condition Items, Overhead, and Profit.

1.10 SIGNING BIDS

- A. If the bidder is an individual, the bid form shall be signed by the individual himself, under his business name. If the bidder is a partnership, the bid form shall be signed by an authorized partner, under the name of the partnership. If the bidder is a corporation, the bid form shall be signed by an authorized executive officer of the corporation under its registered name and the corporate seal shall be affixed.

1.11 BID SECURITY:

- A. Bids shall be accompanied by a bid guarantee of not less than ten (10%) of the amount for the Base Bid plus all Additive Alternates requested by the bidding documents. The bid guaranty can be in the form of a bid bond or other acceptable methods as defined in section the Project Manual. Bid Bonds are to be issued by an acceptable bonding company licensed to do business in the State of Delaware, with a warrant of attorney to confess judgment thereon, with the understanding that it shall guarantee that the bidder will not withdraw his bid before period of sixty (60) days has elapsed after the scheduled closing time for the receipt of bids; that if his bid is accepted, he will enter into a formal contract with the owner, and that the required performance and labor and material payment bonds will be furnished.; and that in the event of the withdrawal of said bid within said period, or the failure to enter into said contract and furnish performance and payment bonds within the time specified, the bidder shall be liable to the owner for the full amount of the bid guarantee as liquidated damages.
- B. The bid bond shall be provided on the forms included in Section 00301 of the bidding documents.
- C. Should a bid bond be submitted with the proposal, the penal sum in lieu of being stated in dollars shall be substituted by the following: "Penal sum equal to ten (10%) percent of the total amount of the base bid plus all additive alternate bids" required. Alternate acceptable forms for the Bid Guarantee shall also include a certified check or cashier's check.
- D. The bid bond of unsuccessful bidders will be returned upon awarding the contract or rejection of all bids, in no event, no later than sixty (60) days from the opening of proposals. That of the successful bidder will be returned when formal contract and performance and payment bonds are accepted and approved.

- E. In reference to the warrant of attorney noted above, the bonding company shall be governed by the amendment to Title 18 of the Delaware Code (or other applicable code). This amendment dealing with the suretyship adds the following:
1. Part II, Chapter 77, Sub-chapter I, Specific reference is made herewith to Section 7708 within Chapter 77 which states as follows: "In all instances where corporated suretyship is offered in accordance with the provisions of this Chapter, and where the form of bond required by law contains a warrant of attorney, the bond shall be accepted without such warrant of attorney being written therein." Bidders shall verify with their respective bonding companies for compliance with the corporated suretyship status required by law, prior to the submission of the bond.

1.12 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BONDS

- A. Within five (5) days after the receipt of the Notice of Award of contract, the bidder to whom the award is made shall furnish a performance bond and labor and material payment bond, each equal to the full amount of the contract price to guarantee the faithful performance of all terms, covenants, and conditions of the same. The bonds are to be issued by an acceptable bonding company licensed to do business in the State of Delaware and shall be issued in triplicate.
- B. The bid bond shall be provided on the forms included in Section 00601 of the bidding documents.
- C. The bonds shall be maintained in full force for a period of twelve (12) months after the date of the certificate of final payment. The performance bond shall guarantee the make good any faults or defects in his work which may develop during the period of said guarantee as a result of improper or defective workmanship, material, or apparatus, whether furnished by himself or his subcontractors. The payment bond shall guarantee that the contractor shall pay in full all persons, firms or corporations who furnish labor, material, or both labor and materials for, or on account of, the work included herein. The bonds shall be paid for by this contractor. The owner shall have the right to demand proof that the parties signing the bonds are duly authorized to do so.
- D. Every such bond shall have a warrant of attorney attached thereto authorizing the owner, by and through its attorney, to enter judgment thereon in any court in the United States of America or elsewhere against the obligors therein named for the amount therein named, and shall be conditioned for the honest and faithful compliance with all provisions of the contract of the bidders. Wherever, in the opinion of the agency, it is for the best interest of the owner that judgment be entered on any such bonds, it shall be so ordered and done by the attorney in the proper amounts.
- E. In reference to the warrant of attorney noted above, refer to the preceding paragraph for applicable notes on need for warrant of attorney attached, where a corporated surety is being used by the bidder.
- F. See Section 00601 for sample documents.

1.13 FINANCIAL AND EXPERIENCE STATEMENT:

- A. In accordance with Title 29, Chapter 69, Section 6962 of the Delaware Code Annotated the Department may require any bidder to answer a questionnaire and file a financial statement containing a complete statement of the bidder's financial ability and experience in performing the work contained in the plans and specifications.
- B. If the Department is not satisfied with the sufficiency of the answers to the questionnaire or the financial statement, it may refuse to furnish the bidder submitting such unsatisfactory answers or financial statement the plans and specifications for the work and the bid may be disregarded.
- C. No action of any nature shall lie against the Department because of its refusal to furnish the bidder with plans and specifications (29 Del. C. 153, s 6962; 54 Del. Laws, c 106, s 2).

1.14 BID SUBMITTAL:

- A. The bidder shall assume full responsibility for timely delivery at the location designated for receipt of bids. Oral, telegraphic or telephonic bids are invalid and will not receive consideration. Each bid shall be submitted in an opaque, sealed envelope marked Bid Enclosed, endorsed with the project name, the name of the bidder and the bid opening date and time. Bids submitted by mail shall be enclosed in an outer envelope, similarly endorsed, and addressed to the owner.
- B. No responsibility shall be attached to any person or persons for the premature opening of any bids not properly identified.

1.15 MODIFICATION OR WITHDRAWAL OF BID:

- A. A bid may not be modified, withdrawn or canceled by the bidder during the stipulated time period following the time and date designated for the receipt of bids, and each bidder so agrees in submitting his bid.
- B. Prior to the time and date designated for receipt of bids, any bid submitted may be modified or withdrawn by notice to the party receiving bids at the place designated for receipt of bids.
- C. Bid security, if any is required, shall be in an amount sufficient for the bid as modified or resubmitted.

1.16 ACCEPTANCE OF BID and EXECUTION CONTRACT:

- A. Within five (5) days after the receipt of the notice of intent to award the contract the successful bidder shall promptly execute a formal contract to be approved as to its form, terms, and conditions by the owner.
- B. Within ten (10) days of being awarded the contract, the successful contractor shall submit to the owner, a schedule of values, AIA Document 0703.
 - 1. Each general area shall be subdivided into the various trades or components as applicable.
- C. Per Section 6962(d)(13) a., Title 29, Delaware Code, "The contracting agency shall award any public works contract within thirty (30) days of the bid opening to the lowest responsive and responsible bidder, provided the amount of the low bid does not

exceed the amount of funds estimated by the Owner to be available to finance the contract.

- D. The "low bidder" will be that bidder whose base bid, combined with any alternatives in the bid form, in any order or combination determined by the owner, produces the lowest net bid.
- E. The owner shall determine that each bidder on any contract is responsible before awarding the contract. Factors to be considered in determining the responsibility of a bidder include:
 - 1. The bidder's financial, physical, personnel or other resources including subcontracts;
 - 2. The Bidder's record of performance on past public or private construction projects, including, but not limited to, defaults and/or final adjudication or admission of violations of prevailing wage laws in Delaware or any other state;
 - 3. The bidder's written safety plan;
 - 4. Whether the bidder is qualified legally to contract with the State;
 - 5. Whether the bidder supplied all necessary information concerning its responsibility; and,
 - 6. Any other specific criteria for a particular procurement, which an agency may establish; provided however, that the criteria be set forth in the invitation to bid and is otherwise in conformity with State and/or federal law.
- F. If the school district determines that a bidder is nonresponsive and/or nonresponsible, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be sent to the affected bidder within five (5) working days of said determination. The final determination shall be made part of the procurement file.

1.17 AIA DOCUMENTS

- A. G702 & G703 – Application and Certificate for Payment
- B. If it is deemed necessary by the contractor to review the before mentioned documents, the contractor may schedule to visit the engineers office to do so.

1.18 PERMITS

- A. Technical documents required for permit procurement will be provided to the Contractor by the Architect/Engineer of Record.
- B. Permit fees for the general building permit will be provided to the Project General Contractor by the Owner in the form of a check made out to the permitting agency.
- C. Trade permit fees including, but not limited to, plumbing, HVAC, and electrical shall be provided by the Appropriate Trade Contractor or their Subcontractors.

- D. The General Contractor shall make application for and pick up the general building permit.

1.19 RESPONSIBILITY OF THE OWNER

- A. The owner shall not be responsible for items shipped by parcel post, express, and/or freight consigned to the owner and signed for by an employee of the owner.

1.20 ACCESS TO SITE

- A. Before commencing any construction work, the Contractor is to consult with the Owner as to matters in connection with access to the site and the allocation of areas for the various features of hauling, storage, etc.

1.21 SALVAGE MATERIAL

- A. The Owner shall have first right of refusal for all salvage material to be generated by, and equipment to be removed by, this contract. The Contractor shall transport the owner's salvage material and equipment to a storage location on the premises designated by the Owner.

1.22 PROJECT SCHEDULE

- A. Once the contract has been executed the contract work shall be completed within one hundred and 120 working days.

1.23 CONSTRUCTION TIME AND LIQUIDATED DAMAGES

- A. Contractor shall prepare bid based on working the necessary hours to meet the Project Schedule.
- B. Contractor may begin work once a contract has been executed.
- C. Contractor must complete all work in the time stipulated in the Project Schedule.
- D. Contractor must take into account any phasing necessary to complete the project in accordance with the project schedule.
- E. The agreement between the owner and contractor shall stipulate that failure to complete all work in accordance with the project schedule shall result in liquidated damages being paid to the owner in the amount of One Thousand Dollars (\$1,000.00) per day.

1.24 CONFLICTING INFORMATION

- A. Where information between Specifications and General Requirements appears to be conflicting, the more stringent of the two shall prevail.

END OF SECTION 00100

BID FORM

For Bids Due: Tuesday, June 4, 2013 @ 2:00 PM

To: Red Clay Consolidated School District
Facilities Department
1502 Spruce Avenue
Wilmington, Delaware, 19805

Name of Bidder: _____

Delaware Business License No.: _____

Employers Identification No.: _____

Phone No.: (_____) _____ - _____ Fax No.: (_____) _____ - _____

The undersigned, representing that he has read and understands the Bidding Documents and that this bid is made in accordance therewith, that he has visited the site and has familiarized himself with the local conditions under which the Work is to be performed, that he has familiarized himself with all conditions affecting the prosecution of the work including the availability of materials and labor, and that his bid is based upon the materials, systems and equipment described in the Bidding Documents without exception, hereby proposes and agrees to provide all labor, materials, plant, equipment, supplies, transport and other facilities required to execute the work described by the aforesaid documents for the lump sum itemized below:

LUMP SUM BASE BID: Conrad Schools of Science Stadium Bleachers

\$ _____
(Words)

\$ _____
(Figures)

ALTERNATES

Alternate prices conform to applicable project specification section. Refer to specifications for a complete description of the following Alternates. An "ADD" or "DEDUCT" amount is indicated by the crossed out part that does not apply.

ALTERNATE No. 1: Hot-Mix Asphalt Pedestrian Path in lieu of GABC

Add/Deduct:

\$ _____
(Words)

\$ _____
(Figures)

ALTERNATE No. 2: C.I.P. Concrete Pedestrian Path in lieu of GABC

Add/Deduct:

\$ _____
(Words)

\$ _____
(Figures)

ALTERNATE No. 3: Black vinyl coated chain-link fence (1" mesh) in lieu of riser closure facade

Add/Deduct:

\$ _____
(Words)

\$ _____
(Figures)

ALTERNATE No. 4: Stone and geotextile fabric under proposed bleachers

Add/Deduct:

\$ _____
(Words)

\$ _____
(Figures)

UNIT PRICES

(Unit prices conform to applicable project specification section.)

I/We acknowledge Addendums _____ and the price(s) include any cost/schedule impact they may have.

I/We agree that any changes in the scope of the work extra to the Contract requirements will be paid for pursuant to AIA Document A201, Article 7.

The bid shall remain valid and cannot be withdrawn for a period of thirty (30) days from the date of opening of bids, and the undersigned shall abide by the Bid Security forfeiture provisions. Bid Security is attached to this Bid.

The Owner shall have the right to reject any or all bids, and to waive any informality or irregularity in any bid received.

This bid is based upon work being accomplished by the Sub-Contractors named on the list attached to this bid.

Should I/We be awarded this contract, I/We pledge to achieve substantial completion of all the work of the Contract in accordance with the Construction Schedule and/or completion dates included with the Bid.

The undersigned represents and warrants that he has complied and shall comply with all requirements of local, state, and national laws; that no legal requirement has been or shall be violated in making or accepting this bid, in awarding the contract to him or in the prosecution of the work required; that the bid is legal and firm: that he has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken action in restraint of free competitive bidding.

I/We agree that all applicable Federal, State, and local taxes and cost of required insurance are included in the proposed prices.

Upon receipt of written notice of the acceptance of this Bid, the Bidder shall, within twenty (20) calendar days, execute the agreement in the required form and deliver the Contract Bonds, and Insurance Certificates, required by the Contract Documents. This Proposal shall be attached as Exhibit A and made part of the Agreement executed by the Bidder.

I/We are licensed, or have initiated the license application as required by Section 2502, Chapter 25, Title 30, of the Delaware Code.

I am / We are (Check one):

_____ **An Individual.**

_____ **A Partnership** duly recorded in the Prothonatary's Office in _____
County pursuant to 6 Delaware Code, Chapter 31.

_____ **A Corporation** registered with the State of Delaware pursuant to 8 Delaware
Code, Chapter 3.

By _____
(Individual's / General Partner's / Corporate Name)

Trading as _____

State of Corporation _____

Business Address: _____

Witness: _____

By: _____
(Authorized Signature)

(CORPORATE SEAL, if applicable)

Typed or printed name

(Title)

Date: _____

STATE OF _____)

_____ COUNTY) ss,

I hereby certify that before me this _____ day of _____,
20 _____, personally appeared _____,
in his official capacity as President/Principal, and acknowledged the aforesaid before me.

Given under by hand and notarial seal.

Notary Public

ATTACHMENTS

- Non-Collusion Statement
- Sub-Contractor List
- Bid Security (certified check or bid bond issued on mandatory form)
- (Others as Required by Project Manual)

NON-COLLUSION STATEMENT

This is to certify that the undersigned bidder has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal submitted this date to the Department of Natural Resources and Environmental Control, Division of Parks and Recreation.

All the terms and conditions of Contract No. _____ have been thoroughly examined and understood.

Name of Bidder: _____

**Authorized Representative
(Typed):** _____

**Authorized Representative
(Signature):** _____

Title: _____

Address of Bidder: _____

Phone Number: _____

Sworn to and Subscribed before me this _____ day of _____
20_____.

My Commission expires _____. NOTARY PUBLIC _____.

This Page Must Be Signed And Notarized For Your Bid To Be Considered.

SUBCONTRACTOR LIST

In accordance with Title 29, Chapter 6962 (d)(10)G Delaware Code, the following sub-contractor listing must accompany the bid submittal. The name, address (City and State), State of Delaware Business License Number and Federal Employer Identification Number of the sub-contractor must be listed for each category where the bidder intends to use a sub-contractor to perform that category of work. In order to provide full disclosure and acceptance of the bid by the Owner, it is required that bidders list themselves as being the sub-contractor for all categories where he/she is qualified and intends to perform such work.

The bid may be considered non-responsive if this form is incomplete.

SUBCONTRACTOR FOR:

SUBCONTRACTOR INFORMATION
(No Street Address Required)

Bleachers

Name: _____

Address: _____

License _____

E.I. No. _____

Concrete

Name: _____

Address: _____

License _____

E.I. No. _____

Painting/Coating

Name: _____

Address: _____

License _____

E.I. No. _____

BID BOND

TO ACCOMPANY PROPOSAL
(Not necessary if security is used)

KNOW ALL MEN BY THESE PRESENTS That: _____
of _____ in the County of _____ and State of _____
_____ as **Principal**, and _____ of _____
_____ in the County of _____ and State of _____ as **Surety**, legally
authorized to do business in the State of Delaware ("**State**"), are held and firmly unto the **State** in the sum of _____
_____ Dollars (\$ _____), or _____
percent not to exceed _____ Dollars
(\$ _____) of amount of bid on Contract No. _____, to be paid to the **State**
for the use and benefit of the Red Clay Consolidated School District for which payment well and truly to be made,
we do bind ourselves, our and each of our heirs, executors, administrators, and successors, jointly and severally
for and in the whole firmly by these presents.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH That if the above bounden **Principal** who has
submitted to the Red Clay Consolidated School District a certain proposal to enter into this contract for the
furnishing of certain material and/or services within the **State**, shall be awarded this Contract, and if said
Principal shall well and truly enter into and execute this Contract as may be required by the terms of this Contract
and approved by the Red Clay Consolidated School District this Contract to be entered into within twenty days
after the date of official notice of the award thereof in accordance with the terms of said proposal, then this
obligation shall be void or else to be and remain in full force and virtue.

Sealed with _____ seal and dated this _____ day of _____ in the year of our Lord two
thousand and _____ (20____).

SEALED, AND DELIVERED IN THE
Presence of

Name of Bidder (Organization)

Corporate
Seal

By: _____
Authorized Signature

Attest _____

Title

Name of Surety

Witness: _____

By: _____

Title

END OF SECTION 00301

AGREEMENT FORM

- A. The Form Agreement for work to be performed under this contract shall be AIA Document A101-1997, where the basis of payment is a stipulated sum.

END OF SECTION 00500

1 GENERAL

1.1 RELATED SECTIONS

- A. Section 00100 Instructions to Bidders
- B. Section 00300 Bid Form
- C. Section 00500 Agreement Form
- D. Section 00800 General Conditions
- E. Section 01741 Bonds

1.2 FORMS SUBMITTED BY CONTRACTOR

- A. Reference is made throughout this project manual to a number of standard forms which the contractor is required to submit to the owner prior to and during the execution of work of this project.
- B. The contractor shall be responsible for obtaining and submitting the following forms to the owner when the forms are completed as specified.
- C. Prior to commencing work:
 - 1. AIA Document G715 "Acord Certificate of Insurance" (Latest Edition).
 - 2. "Form of Performance Bond" and "Form of Payment Bond" (Samples enclosed) Use of these forms is mandatory.
- D. During the execution of the work, as appropriate, and prior to final payment:
 - 1. Modified AIA Document G702 "Application and Certificate for Payment". (Sample Enclosed)
 - 2. Modified AIA Document G703 "Continuation Sheet" for G702, "Application and Certificate for Payment". (Sample Enclosed)
 - 3. AIA Document G706 "Contractor's Affidavit of Payment of Debts and Claims" (Latest Edition).
 - 4. AIA Document G706A "Contractor's Affidavit of Release of Liens" (Latest Edition).
 - 5. AIA Document G707 "Consent of Surety to Final Payment" (Latest Edition).
 - 6. AIA Document G707A "Consent of Surety to Reduction in or Partial Release of Retainage" (Latest Edition).
 - 7. Payroll Report (Sample Enclosed).
 - 8. The forms specified above are available for examination in the owner's office by prospective bidders. Failure to examine the specified documents and to make allowances for them in his bid, shall not relieve the contractor from using the forms and complying with their requirements.

1.3 FORMS PREPARED BY OWNER:

- A. The owner shall prepare the following standard forms, as appropriate:
 - 1. AIA Document A101-1997 "Standard Form of Agreement Between Owner and Contractor - Stipulated Sum".
 - 2. AIA Document G701 "Change Order" (Latest Edition).
 - 3. AIA Document G704 "Certificate of Substantial Completion" (Latest Edition).
 - 4. AIA Document G714 "Construction Change Directive" (Latest Edition).

END OF SECTION 00600

FORM OF PERFORMANCE BOND

Bond Number: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, _____, as principal ("Principal"), and _____, a _____ corporation, legally authorized to do business in the State of Delaware, as surety ("Surety"), are held and firmly bound unto the Red Clay Consolidated School District ("Owner"), in the amount of _____ (\$_____), to be paid to Owner, for which payment well and truly to be made, we do bind ourselves, our and each and every of our heirs, executors, administrations, successors and assigns, jointly and severally, for and in the whole, firmly by these presents.

Sealed with our seals and dated this _____ day of _____, 20__.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, who has been awarded by Owner that certain contract known as Contract No. _____ dated the _____ day of _____, 20__ (the "Contract"), which Contract is incorporated herein by reference, shall well and truly provide and furnish all materials, appliances and tools and perform all the work required under and pursuant to the terms and conditions of the Contract and the Contract Documents (as defined in the Contract) or any changes or modifications thereto made as therein provided, shall make good and reimburse Owner sufficient funds to pay the costs of completing the Contract that Owner may sustain by reason of any failure or default on the part of Principal, and shall also indemnify and save harmless Owner from all costs, damages and expenses arising out of or by reason of the performance of the Contract and for as long as provided by the Contract; then this obligation shall be void, otherwise to be and remain in full force and effect.

Surety, for value received, hereby stipulates and agrees, if requested to do so by Owner, to fully perform and complete the work to be performed under the Contract pursuant to the terms, conditions and covenants thereof, if for any cause Principal fails or neglects to so fully perform and complete such work.

Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of Surety and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition or change in or to the Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or any monies due or to become due thereunder; and Surety hereby waives notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to Surety as though done or omitted to be done by or in relation to Principal.

Surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of the Contract shall in any way whatsoever affect the obligation of Surety and its bond.

Any proceeding, legal or equitable, under this Bond may be brought in any court of competent jurisdiction in the State of Delaware. Notices to Surety or Contractor may be mailed or delivered to them at their respective addresses shown below.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hand and seals, and such of them as are corporations have caused their corporate seal to be hereto affixed and these presents to be signed by their duly authorized officers, the day and year first above written.

PRINCIPAL

Name: _____

Witness or Attest: Address: _____

Name:

(Corporate Seal)

By: _____ (SEAL)
Name:
Title:

SURETY

Name: _____

Witness or Attest: Address: _____

Name:

(Corporate Seal)

By: _____ (SEAL)
Name:
Title:

FORM OF PAYMENT BOND

Bond Number: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, _____, as principal ("Principal"), and _____, a _____ corporation, legally authorized to do business in the State of Delaware, as surety ("Surety"), are held and firmly bound unto the Red Clay Consolidated School District ("Owner"), in the amount of _____ (\$_____), to be paid to Owner, for which payment well and truly to be made, we do bind ourselves, our and each and every of our heirs, executors, administrations, successors and assigns, jointly and severally, for and in the whole firmly by these presents.

Sealed with our seals and dated this _____ day of _____, 20__.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, who has been awarded by Owner that certain contract known as Contract No. _____ dated the _____ day of _____, 20__ (the "Contract"), which Contract is incorporated herein by reference, shall well and truly pay all and every person furnishing materials or performing labor or service in and about the performance of the work under the Contract, all and every sums of money due him, her, them or any of them, for all such materials, labor and service for which Principal is liable, shall make good and reimburse Owner sufficient funds to pay such costs in the completion of the Contract as Owner may sustain by reason of any failure or default on the part of Principal, and shall also indemnify and save harmless Owner from all costs, damages and expenses arising out of or by reason of the performance of the Contract and for as long as provided by the Contract; then this obligation shall be void, otherwise to be and remain in full force and effect.

Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of Surety and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition or change in or to the Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or any monies due or to become due thereunder; and Surety hereby waives notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to Surety as though done or omitted to be done by or in relation to Principal.

Surety hereby stipulates and agrees that no modifications, omission or additions in or to the terms of the Contract shall in any way whatsoever affect the obligation of Surety and its bond.

Any proceeding, legal or equitable, under this Bond may be brought in any court of competent jurisdiction in the State of Delaware. Notices to Surety or Contractor may be mailed or delivered to them at their respective addresses shown below.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hand and seals, and such of them as are corporations have caused their corporate seal to be hereto affixed and these presents to be signed by their duly authorized officers, the day and year first above written.

PRINCIPAL

Name: _____

Witness or Attest: Address: _____

Name:

(Corporate Seal)

By: _____ (SEAL)
Name:
Title:

SURETY

Name: _____

Witness or Attest: Address: _____

Name:

By: _____ (SEAL)
Name:
Title:

RED CLAY CONSOLIDATED SCHOOL DISTRICT

GENERAL CONDITIONS

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**ARTICLE 1
DEFINITIONS**

Addendum:	Written change to the Bid Documents issued by the District prior to award of a Contract. More than one such change is referred to as “Addenda.”
Application for Payment:	Contractor’s written request for payment of amounts due for installed portions of the Work, and if the Contract so provides, for materials delivered and suitably stored on or off the Work Site pending their incorporation into the Work. Each Application for Payment must be approved by the Architect of Record and the District before payment will be made.
Architect of Record:	
As-Built Drawings:	Copies of the most recent revision of Construction Documents and approved Shop Drawings maintained at the Work Site by the Contractor and marked to show actual field conditions and as-built conditions which differ from what is shown on the most recent revision of the Construction Documents and approved Shop Drawings.
District	The Red Clay Consolidated School District. The District is also referred to in the Contract Documents as the “Owner” and includes the District and its authorized agents and representatives.
Beneficial Occupancy:	The taking possession by the District of a portion of the Work for its use and/or occupancy on other than a temporary or emergency basis.
Bid:	A complete and properly signed written proposal of the Bidder, submitted on the Bid Proposal Form included in the Bid Documents, to furnish the necessary materials and to perform the Work in accordance with the Contract Documents and for the sum stipulated, verified for mathematical correctness in accordance with the terms set forth in the Instructions to Bidders, supported by the data called for by the bidding requirements for such Work.
Bid Security:	The cashier’s check, certified check or U.S. currency, or Bid Bond, accompanying the Bid submitted by the Bidder, as a guarantee that the Bidder will enter into the Contract with the District for the performance of the Work and will furnish all other Bonds and insurance if the Contract is awarded to it.

Bidder:	An individual, firm, partnership, corporation or combination thereof, submitting a Bid for the Contract Work.
Bonds:	The Bid Bond given as Bid Security, if any, the Performance Bond and Labor and Materialman's Bond required by the Conditions, and any other Bonds required to be furnished by the Contract Documents.
Certificate of Substantial Completion:	The certificate issued by the Architect of Record, with the assistance of the District, in accordance with Article 43 of these General Conditions, to the District that the Contractor has substantially completed the Work or a portion thereof in accordance with the Contract Documents.
Change Order:	A written order to the Contractor signed by the District and the Contractor (except in the case of a Disputed Change Order or Unilateral Change Order), issued after execution of a Contract and pursuant to a Change Order Request, authorizing a change in the Work to be performed by the Contractor under the Contract, or an adjustment in the Contract Sum or Contract Time, or other changes in, or a written interpretation of the Contract Documents. A Change Order may be agreed to by all parties in all respects or may be a Disputed Change Order or a Unilateral Change Order.
Change Order Request:	A document submitted by the Contractor to the District pursuant to Article 47 requesting that a Change Order be issued to the Contractor and describing the events and circumstances giving rise to the request, the effect that the requested change will have on the Contract Time and the approved Project Schedule, and a statement of costs associated with the requested change, including all costs associated with both changed work and unchanged work.
Construction Documents:	The Drawings and Specifications (as each may be amended from time to time) which have been prepared by the Architect of Record and which are necessary to describe construction of the Project or a portion thereof, and which are in detail suitable for use in bidding and constructing the Project or a portion thereof.
Contract:	The Contract Documents.
Contract Documents:	Invitation to Bid Instructions to Bidders Bid Proposal

Owner/Contractor Agreement (including all Addenda and Change Orders)
Performance Bond
Labor and Material Payment Bond
Release
General Conditions
Construction Documents

- Contract Sum:** The price set forth in the Contract as the total amount payable by the District to the Contractor for the performance of the Work under the Contract Documents. Contract Sum can be adjusted only by Change Order.
- Contract Time:** Contract Time means the total time allowed for performance of the Contractor's Work, measured in Calendar days, set forth in the Contract Documents, including all time extensions authorized by Change Order. Contract Time can be adjusted only by Change Order.
- Contractor:** The individual, firm, partnership or corporation, or combination thereof, including joint ventures, which, as an independent contractor, has entered into the Contract with the District, who is referred to throughout the Contract Documents by singular number and neutral gender.
- Contractor's Representative:** The Contractor's representative who is present on the Work Site at all times during performance of the Work and who is authorized to receive and fulfill instructions, and who shall direct the construction activities of the Contractor.
- Days:** Unless otherwise designated, days mean calendar days.
- Disputed Change Order:** A kind of Change Order resulting where the District wishes to direct the Contractor to proceed with the performance of changed work prior to the Contractor's submittal of a Change Order Request or where the District and the Contractor do not agree that there is a change being made and which requires the Contractor to perform the Work and maintain records from which to determine whether any additional costs are incurred or extensions of time are required.
- Drawings:** Documents showing in graphic or pictorial form the design, location and specific details of all of the elements of the Project, including but not limited to site drawings, existing grades, paving, curbs, utility lines, Architect of Record design, interior, FF&E design, structural, civil, mechanical, electrical,

plumbing and fire protection systems, as applicable to the Contract.

Final Application for Payment:

The Application for Payment made for the last payment requested under the Contract, including retainages and all claims of the Contractor in respect of the Work. The Final Application for Payment must be approved by the Architect of Record, the Managing Architect, and the District before payment will be made.

Final Completion:

The date upon which the Architect of Record certifies to the District that the Work, including Punch List items, has been completed in accordance with the Contract Documents and that the District has received all required documents, manuals, certificates and submittals provided for under the Contract.

General Requirements:

The goods and services provided by the Contractor which are necessary for the management of the Contract but which are not incorporated into or become part of the Project, including, without limitation, requisite office trailer, sanitary, ventilation and other facilities, fences, set-offs and similar matters.

Hazardous Materials:

Hazardous Materials means any and all materials identified as hazardous by any federal, state, county or municipal law, statute, ordinance, order or regulation related to the protection of the environment or worker safety and health applicable to the Contractor's Work. The term "Hazardous Materials" is sometimes used interchangeably with the term "Hazardous Substances".

Indicated or As Indicated:

A term meaning, "as shown on the Drawings, as specified in the Technical Specifications and/or as required by or reasonably inferable from the Contract Documents."

Inspector:

An authorized representative of the District, or if authorized by the District, a representative of the Contractor assigned to make inspections and/or tests of the work performed or being furnished by the Contractor.

Installation, Install:

Completely assembling, erecting and connecting material, parts, components, appliances, supplies and related equipment specified or required for the completion of the Work.

Invitation to Bid:

The invitation to make a Bid issued by the District to Bidders.

Managing Architect

JAED Corporation, and its successors and permitted assigns.

Materials:	Equipment, material, products, and articles incorporated in the Work.
Notice of Award:	Written notice to the successful Bidder that the District is awarding the Contract to that Bidder.
Notice to Proceed:	Written notice from the District to the Contractor to proceed with the Work.
Contract Completion Date:	The date measured in calendar days after the effective date of the Notice to Proceed issued by the District by which the Contractor shall Substantially Complete the Contract, as set forth in the Owner/Contractor Agreement.
Owner:	The District.
Product Data:	Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.
Project:	All design, construction and other work necessary to construct the District's hotel and conference center.
Project Schedule:	The schedule for the Work prepared by the Contractor in consultation with the Managing Architect as accepted by the District, which is the contractually binding schedule for the performance of the Work, unless and until revised by Change Order.
Punch List:	The list of incomplete or unsatisfactory items attached to a Certificate of Substantial Completion, including a schedule for completion of such items.
Request for Information:	A document submitted by the Contractor requesting clarification, interpretation, or additional information with respect to the Drawings and Specifications.
Request for Proposal	A document issued by the Architect of Record to identify conditions which may result in a change in the Contract Sum or Contract Time. If Contractor believes that it is entitled to a change in Contract Time or Contract Sum, Contractor shall submit a Change Order Request to the District.
Samples:	Physical examples which illustrate materials, equipment, fixtures and workmanship and which establish standards by

which the Work may be judged, provided that the Work is otherwise in conformity with the Contract Documents.

- Schedule of Values: The detailed schedule of values of component parts of the Work delivered by Contractor prior to the submittal of Contractor's first Request for Payment.
- Shop Drawings: Drawings, diagrams, illustrations, schedules, performance charts and other data specifically prepared for the Project by the Contractor or any Subcontractor, manufacturer, Supplier or distributor, which are representative of the quality of materials to be used in the Work, and which illustrate (a) the proposed fabrication and assembly of structural elements; and (b) the installation (form, fit, and attachment details) of materials or equipment and submitted to the District by the Contractor. Shop Drawings shall be deemed to include Product Data, literature, and performance and test data.
- Specifications: The portion of the Construction Documents consisting of written descriptions of materials, equipment, construction systems, design standards and quality of the Project, and other written directions and requirements for completing the Work. Specifications are sometimes referred to as Technical Specifications.
- Subcontractor: Any person, firm or corporation, other than the employees of the Contractor, who contracts with the Contractor to furnish labor or labor and materials under the Contract. Except as otherwise noted the term Subcontractor means first-tier subcontractors.
- Substantial Completion of the Work: Substantial Completion of the Work means the date certified by the Architect of Record and approved by the District as the date upon which (a) construction is sufficiently complete in accordance with the Construction Documents and functionally suitable for its intended purpose; and (b) a certificate of occupancy has been issued.
- Technical Specifications: The term "Specifications" and "Technical Specifications" are used interchangeably.
- Unilateral Change Order: A kind of Change Order resulting where the District and the Contractor agree that a change is being made but do not agree on the adjustment to the Contract Sum or Contract Time warranted thereby, if any, and in which the District designates

how such adjustment will be made and the Contractor is required to perform the Work as so changed.

Work: The construction, labor, materials, equipment and contractual requirements as indicated in the Contract Documents, including alterations, amendments, or extensions thereto made by Change Order.

Work Site: The area enclosed within the project limits indicated in the Drawings and boundaries of local streets and public easements in which the Contractor is to perform the Work under the Contract, either exclusively or in conjunction with others performing other work as part of the Project. It shall also include areas obtained by the Contractor for use in connection with the Contract, when contiguous to the project limits.

ARTICLE 2 INTERPRETATION

Section 2.1. **Complementary Documents.** The individual documents comprising the Contract Documents are complementary, and indicate the construction and completion of the Work. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. In case of conflict, the most expensive combination of quality and quantity shall govern.

Section 2.2. **Inclusive References.** References to Articles or Sections include sub-articles or sub-sections under the Article or Section referenced (for example, a reference to Article 12 is also a reference to Section 12.1 through Section 12.6) and references to sub-articles and sub-sections similarly include references to further sub-articles and sub-sections thereunder.

Section 2.3. **Referenced Standards.** Material and workmanship specified by the number, symbol, or title of a referenced standard shall comply with the specified edition or revision thereof as set forth in Section 01090 of the Specifications. In case of a conflict between the Specifications and the referenced standard, the more stringent shall govern.

Section 2.4. **Interpretation of Contract Documents.** The Contractor shall refer any perceived ambiguity, inconsistency, or discrepancy in the Contract Documents to the District for determination of the intent of the Contract Documents in accordance with this **Section 2.4**. Except as provided by

Section 2.1 of this Article, the precedence of the Contract Documents shall be as set forth herein.

- 2.4.1. Fully Executed Change Orders
- 2.4.2. Owner/Contractor Agreement
- 2.4.3. Special Conditions, if any
- 2.4.4. General Conditions
- 2.4.5. Construction Documents
- 2.4.6. Supplementary Conditions, if any
- 2.4.7. Other Contract Documents not listed above.

Section 2.5. **Explanations.** Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall submit to the District, with a simultaneous copy to the Architect of Record, a Request for Information in writing for such further written explanations as may be necessary and Contractor's Work shall conform to the explanation provided as part of the Contract.

Section 2.6. **Differences Between Drawings.** The most recent revision of Drawings shall control over older revisions. In the event of discrepancy between any drawing and the figure written thereon, the figures shall govern over scaled dimensions.

Section 2.7. **Omissions and Mis-descriptions.** Before submitting its Bid to the District, and continuously thereafter, the Contractor shall carefully study and compare all Drawings, Specifications and other Contract Documents; shall verify all figures on the Drawings before laying out the Work; study the Existing Conditions Data; and shall promptly notify the District of all errors, inconsistencies, or omissions which he may discover; and obtain specific instructions in writing before proceeding with the Work. The Contractor shall not take advantage of any apparent error or omission which may be found in the Drawings or Specifications, but the Architect of Record shall be entitled to make such corrections therein and interpretations thereof as it may deem necessary for the fulfillment of their intent as provided in **Section 2.1** above. The Contractor shall be liable to the District for all costs and damages resulting from errors in construction which could have been avoided by such examination and notification, and shall correct at his own expense and without extension of Contract Time, all work improperly constructed through failure to notify the Architect of Record and to request specific instructions. Omission from the Drawings or Specifications or the misdescription of details of Work which are

manifestly necessary to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted Work (no matter how extensive) or misdescribed details of the Work and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications at no additional expense or delay to the District.

Section 2.8. **Verification of Dimensions and Existing Work.** The Contractor, before commencing work, shall verify all governing dimensions at the Work Site, and shall examine all work on which its Work is in any way dependent according to the Contract Documents, and no disclaimer of responsibility for defective or non-conforming adjoining work will be considered unless notice of same has been filed by the Contractor, and acceded to in writing by the District and the Architect of Record before the Contractor begins any part of the Work.

Section 2.9. **Severability.** In the event any Article, Section, sub-article, subsection, sentence, clause or phrase contained in the Contract Documents shall be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication shall in no manner affect the other articles, sections, sub-articles, paragraphs, sentences, clauses or phrases of the Contract Documents, which shall remain of full force and effect as if the article, section, sub-article, paragraph, sentence, clause or phrase declared, determined or adjudged invalid, illegal, unconstitutional or otherwise unenforceable was not originally contained in the Contract Documents.

Section 2.10. **Headings.** The various headings contained in the Contract Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Contract Documents or any provision thereof.

Section 2.11. **Cross References.** Cross referenced Articles and sub-articles are references to Articles and sub-articles in these General Conditions unless otherwise specified.

ARTICLE 3 DELEGATION OF AUTHORITY

Section 3.1. **Final Authority of the District.** The District has the final authority in all matters relating to and affecting the Contract and the Work.

Section 3.2. **Delegation of District.** The District has delegated or will delegate certain powers and duties in connection with the Contract to the Managing Architect and the Architect of Record. Within the scope of this delegation, and as may be additionally authorized in writing by the District, the Managing Architect and the Architect of Record are the authorized representatives of the District; provided, however, that they are

not authorized to revoke, alter, enlarge, relax or release any requirements of the Contract, nor approve or accept any portion of the Work not constructed in accordance with provisions of the Contract nor issue instructions contrary to such provisions.

ARTICLE 4 RESPONSIBILITY OF THE ARCHITECT OF RECORD

The Architect of Record, by separate contract with the District, agreed to observe the work by assisting and working in harmony with the District's representatives, to visit the Work Site at regular intervals, to make written reports to the District relative to the progress of the Work to be performed under the Contract, and to guard the District against defects and deficiencies in the Work of the Contractor. The Architect of Record has agreed to advise the District relative to the quality and acceptability of materials furnished and work performed, the manner, performance and rate of progress, its interpretation of any or all Drawings and Specifications, the acceptable fulfillment of the Contract on the part of the Contractor, and to recommend approval or disapproval of monthly Applications For Payment as prepared by the Contractor. Except as provided in **Section 47.5**, the Architect of Record has no authority strict to authorize any deviations or variations from, changes in or additions to, the Contract Documents, nor to incur any expenses or monetary obligation for the account of the District in connection with the Contract. Enumeration of the foregoing activities of the Architect of Record shall not enlarge or diminish the Architect of Record's obligation to the District nor shall it create any rights in the Contractor.

ARTICLE 5 MANAGEMENT AND SUPERINTENDENCE BY CONTRACTOR

Section 5.1. **Contractor Supervision.** The Contractor shall manage, supervise and direct the Work, using its best skill and attention, and shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. Upon demand made in writing by the District, the Contractor shall cause more than one supervisor employed by the Contractor to undertake the foregoing supervisory responsibility under the Contract. Such demand shall not entitle the Contractor to any adjustment in Contract Time or Contract Sum.

Section 5.2. **Key Personnel.** Key personnel shall include Project Executives, Project Managers, Project Engineers and Superintendent. Before starting the Work, the Contractor shall designate in writing to the District the name, qualifications and experience of its proposed Key Personnel and shall request the District's approval thereof, which shall not be unreasonably withheld. If the District approves same, such persons shall have full

District to represent and to act for the Contractor. A facsimile of the Superintendent's or other authorized representative's signature shall be submitted to the District. The Superintendent or his/her designated substitute (such substitution requiring the prior approval of the District) shall be present at the Work Site at all times that any Work is in progress and at any time that any employee of the Contractor or a Subcontractor is present at the Work Site. Arrangements for responsible supervision, acceptable to the District shall be made for emergency work which may be required during periods when the Work is suspended.

Section 5.3.

Change in Key Personnel. The Contractor shall request approval from the District, in writing, when the Contractor desires to change its Key Personnel and shall provide the information specified above for the District's review. The Contractor shall promptly replace any personnel assigned to the Project at the direction of the Owner if the Owner determines that such removal would be in the best interest of the Project or if the Owner determines that their performance is unsatisfactory or objectionable.

ARTICLE 6 INDEPENDENT CONTRACTOR; ENTITY OF CONTRACTOR

All Services performed by the Contractor under the Contract shall be performed in the capacity of independent contractor and not as agent. If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

ARTICLE 7 AGENT TO ACCEPT SERVICE

The Contractor shall maintain within New Castle County a duly authorized agent to accept service of legal process on its behalf, and shall keep the District advised of such agent's name and address, during the duration of the Contract, and for three (3) years after final payment or as long as the Contractor has warranty obligations under Article 23, WARRANTY OF WORK, whichever period terminates later.

ARTICLE 8 INSURANCE

Section 8.1.

Contractor's Insurance. Contractor shall provide, at its sole cost and expense, the following types of insurance coverages:

8.1.1. Worker's Compensation for his employees with Statutory Limits and including Employer's Liability with limits as follows:

Bodily Injury by Accident - \$1,000,000 each accident
Bodily Injury by Disease - \$1,000,000 policy limit
Bodily Injury by Disease - \$1,000,000 each employee

8.1.2. Business Automobile Liability with limits as follows:

On any, each and all trucks, automobiles or vehicles owned, hired, and non-owned which are used by contractor in the performance of the work, the contractor shall provide automobile liability insurance with a minimum single limit of Two Million Dollars (\$2,000,000) bodily injury and property damage combined.

8.1.3. Commercial General Liability with limits as follows:

Limits of liability of not less than the following for bodily injury and/or property damage and personal/advertising injury applied on a “per project” basis:

\$2,000,000 Each Occurrence
\$3,000,000 General Aggregate
\$3,000,000 Products/Completed Operations Aggregate
\$2,000,000 Personal & Advertising Injury Limit

8.1.4. Umbrella Excess Liability with limits as follows:

Limit of liability of Five Million Dollars (\$5,000,000) and apply excess over the Employers’ Liability, General Liability and Automobile Liability primary policies. This policy shall be written to provide policy limits on a “per project” aggregate basis.

8.1.5. The Commercial General Liability, Automobile Liability, and Umbrella Liability coverages must be written on an “occurrence” basis. “Claims-made” insurance policies are unacceptable.

8.1.6. The District, the Managing Architect, and the Architect of Record and any of their respective employees and agents shall be named as additional insureds. This obligation shall not be avoided by allegations of contributory or sole acts, failure to act, omissions, negligence or fault of the additional insureds.

8.1.7. Each policy of insurance except Workers’ Compensation as described in 8.1.1, 8.1.2, 8.1.3 and 8.1.4, shall waive subrogation against the additional insureds, and shall be primary, with no right of contribution against the District, the

Managing Architect, or the Architect of Record, or their insurers.

ARTICLE 9 LIABILITY AND INDEMNIFICATION

Section 9.1. **Duty to Indemnify.** To the fullest extent permitted by law, the Contractor shall, at its sole cost and expense, fully defend, indemnify and hold harmless, the District, the Managing Architect, the Architect of Record and any of their respective members, officers, employees, agents, consultants and representatives, from and against any and all claims, demands, damages, losses, and expenses (including attorneys' fees) for death, personal injury, or property damage directly or indirectly arising out of or resulting from any act or omission in the performance of the Work by the Contractor or any of its officers, agents, employees, Subcontractors, or individual entities comprising the Contractor, regardless of whether the District, or the Architect of Record or any of their respective members, officers, employees, agents, consultants and representatives were negligent. Contractor waives all immunities and defenses under applicable Worker's Compensation laws in respect of claims for indemnification by parties indemnified hereunder.

Section 9.2. **Survival and Non-exclusivity of Indemnity.** This indemnity shall survive termination of the Contract, Final Acceptance of the Work and final payment under the Contract. This indemnity is in addition to any other rights or remedies which the District or the Architect of Record may have under the law or under the Contract. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, the District may in its sole discretion reserve, retain or apply any monies due to the Contractor under the Contract for the purpose of resolving such claims; provided, however, that the District may release such funds if the Contractor provides the District with reasonable assurance of protection of the District's interests. The District shall in its sole discretion determine whether such assurances are reasonable.

ARTICLE 10 CONTRACTUAL RELATIONSHIPS

Nothing contained in the Contract is intended to or shall have the effect of creating any rights in any third party against the District, the Architect of Record, the Managing Architect or their respective consultants. The inclusion of the Contract or any part thereof in any other document shall not be deemed to be incorporating any obligation, duty, or liability on the part of the District unless the District shall expressly agree thereto in writing.

**ARTICLE 11
ASSIGNMENT**

- Section 11.1. **No Assignment Without Consent.** The Contractor or its surety shall not assign, transfer, convey, or otherwise dispose of the Contract, or any right, title or interest in or to the Contract of any part thereof, without the previous consent in writing of the District endorsed upon or attached to the copies of the Contract filed in the office of the District.
- Section 11.2. **Assignee Without Rights Absent Consent.** No right under the Contract shall be asserted against the District, in law or in equity, by reason of any so-called assignment of the Contract, or any part thereof, unless authorized as aforesaid by the written consent of the District.
- Section 11.3. **Assignee Subject to Setoffs, etc.** Any assignment of proceeds of the Contract shall be subject to all proper setoffs and withholdings in favor of the District and to all deductions provided for in the Contract. All money withheld, whether assigned or not, shall be subject to being used by the District for completion of the Work, pursuant to the terms of this Contract.

**ARTICLE 12
GRATUITIES AND CONFLICTS OF INTEREST**

- Section 12.1. **Termination for Gratuities.** The District may, by written notice to the Contractor, terminate, as a default under **Article 53, TERMINATION FOR OTHER DEFAULTS** hereof, the right of the Contractor to proceed under this Contract if it is found that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor to any director, officer, employee or agent of the District, the Managing Architect or the Architect of Record.
- Section 12.2. **Remedies.** In the event the Contract is terminated as provided in this Article, the District shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor.
- Section 12.3. **No Conflicts.** The Contractor shall not permit any member, officer or employee of the District or of a local public body during his/her tenure or for one year thereafter to have any interest, direct or indirect, in the Contract or the proceeds thereof. "Local public body" means the State, any political subdivision of the State, or any agency or instrumentality of the State or any political subdivision thereof.
- Section 12.4. **Prohibited Contracts.** The Contractor or its employees shall not enter into any contract involving services or property with a person or business prohibited by law, rule or regulation from transacting such business with the District. To the best of Contractor's knowledge, no District member or

officer, and no employee of the District, has any interest (whether contractual, non-contractual, financial or otherwise) in this transaction or in the business of the Contractor. If any such transaction comes to the knowledge of the Contractor at any time, a full and complete disclosure of such information shall be made to the District.

- Section 12.5. **Termination for Criminal Activity.** In the event the Contractor, or any of its officers, partners, principals or employees, is convicted of a crime arising out of or in connection with the Work to be done or payment to be made under the Contract, this Contract may be terminated in whole or in part at the discretion of the District as a termination for default pursuant to **Article 53, TERMINATION FOR OTHER DEFAULTS.**
- Section 12.6. **Non-Exclusive Remedy.** The rights and remedies of the District provided in this Article are not exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

ARTICLE 13 SUBCONTRACTORS

- Section 13.1. **Approval of Subcontractors.** Within ten (10) days after receipt of notice from the District that the Contractor is the apparent low Bidder and prior to execution of the Contract, the Contractor shall furnish to the District a list of its selected Subcontractors with whom it will enter into subcontracts, subject to the approval of the District.

Prior to entering into any subcontract for the Work to be performed on the Contract, or issuing a purchase order to the District for execution with respect to material to be incorporated into the Work, the Contractor shall secure the approval of the District regarding the prospective Subcontractor's qualifications. The District will review the submittal from each Subcontractor, and will furnish written notification to the Contractor concerning approval of the award of the subcontract. If the District reasonably objects to the proposed award, the Contractor may furnish written notice of another Subcontractor for consideration and shall not engage such rejected Subcontractor. Any engagement of such a substituted Subcontractor shall be without change in the Contract Sum. The Contractor shall insert into every subcontract, and shall require insertion into lower tier subcontracts, all provisions required by law, regulation, rule, or by the Contract Documents.

- 13.1.1. If Contractor fails or refuses to enter into a Subcontract with the Subcontractor approved by the District, the District may by written notice to the Contractor, terminate, as a default under **Article 53, TERMINATION FOR OTHER DEFAULTS** hereof.

- 13.1.2. The Contractor shall be fully responsible to the District for acts and omissions of his own employees, and of Subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, Subcontractors, Suppliers and materialmen. When a portion of the Work which has been subcontracted by the Contractor is not prosecuted in accordance with the Contract, or if a Subcontractor commits any act or omits any act which would constitute a breach of the Contract if committed by the Contractor, the Subcontractor shall be replaced on request of the District and shall not again be employed on the Work.
- 13.1.3. The organization of the Specifications into divisions, sections and articles, and the arrangement and titles of Drawings shall not control the Contractor in dividing the Work among Subcontractors or Suppliers nor in establishing the extent of Work to be performed by any trade.
- 13.1.4. No Subcontractor shall be permitted to perform Work at the Work Site until both the Subcontractor and the Contractor, in compliance with the Contract Documents have furnished to the District satisfactory evidence of all insurance required by the Contract Documents to be maintained by them.
- 13.1.5. The Contractor shall not, without the prior written consent of the District, either replace any Subcontractor previously approved, or permit any such subcontract to be assigned or transferred, or allow that portion of the Work to be performed by anyone other than the approved Subcontractor. The Contractor may perform the work itself with qualified personnel with the prior written consent of the District so long as such provisions would not violate any applicable law.
- 13.1.6. The Contractor shall be as fully responsible to the District for the acts and omissions of its Subcontractors and of persons directly or indirectly employed by them, as it is for the acts and omissions of persons employed directly by it.
- 13.1.7. Nothing contained in the Contract shall create any contractual relation between the Owner and any Subcontractor.
- 13.1.8. Subcontractors shall look only to the Contractor for payment or other remedy in the event that any dispute arises under the Subcontract or the Contract Documents.

Section 13.2.

Supervision Program; Communication. Contractor shall prepare and implement a program of supervision to assure compliance by the

Subcontractors with their subcontracts, all legal requirements and all safety and insurance requirements and other standards and requirements applicable to the Construction of the Project. The Contractor shall ensure that all Subcontractors work in a harmonious and efficient manner and shall coordinate the work of all Subcontractors. The Contractor shall have sole responsibility for communicating to its Subcontractors any information required to be communicated by the terms of the Contract or necessitated by the Work to be performed under the Contract.

Section 13.3.

Terms of Subcontracts. The Contractor shall incorporate into each subcontract entered into with any of its Subcontractors the following section. Subcontractor shall insert similar language in any subcontract which Subcontractor may enter into.

Subcontractor's Duties to the District

- 13.3.1. Subcontractor acknowledges and agrees that all Work being performed by it under this Subcontract shall be performed in accordance with the Contract, which Contract is incorporated by reference into and made a part of this Subcontract.
- 13.3.2. Subcontractor agrees that it shall have the same duties and obligations to the Contractor with respect to its performance of the Work as the Contractor has to the District under the Contract.
- 13.3.3. The Contractor and the Subcontractor agree that the District is the third-party beneficiary of the Subcontract and shall have the right to enforce all of the terms of this Subcontract for its own benefit. All guarantees and warranties, express or implied, shall inure to the benefit of both the District and the Contractor during the performance of the Work, and upon final completion of the Work, such guarantees and warranties shall inure to the benefit of the District.
- 13.3.4. The Contractor and the Subcontractor agree that nothing contained in the Subcontract shall be deemed to create any privity of contract between the District and the Subcontractor, nor does it create any duties, obligations or liabilities on the part of the District to the Subcontractor. The Subcontractor shall look only to the Contractor for any payment, redress, relief or other satisfaction in the event of any claim or dispute arising under the Subcontract or the Prime Contract and Subcontractor hereby waives any claim or cause of action against the District arising out of the Subcontract.

13.3.5. In the event of any inconsistency between the Conditions (as defined in the Contract) of the Contract and the Subcontract, the Conditions of the Contract will govern.

Section 13.4. **Non-Discrimination.** The Contractor shall insert in every subcontract a requirement that the Subcontractor shall not discriminate in its employment practices on the basis of race, sex, creed, color, religion or national origin. The Contractor shall also require the Subcontractor insert a similar provision in each of the contracts which the Subcontractor enters into in connection with the Project.

Section 13.5. **Flow Through of Terms.** Other provisions of the Contract require the Contractor to have certain provisions in their subcontracts in addition to those required by this Article 13. The Contractor shall cause each Subcontractor to insert language similar to all such provisions, all of which shall inure to the benefit of the District, into any subcontract which the Subcontractor may enter into.

Section 13.6. **No Release of Contractor.** The Contractor agrees that none of the requirements to insert language in the Contractor's subcontracts, as required by the provisions of this Article and elsewhere in this Contract, will operate to relieve the Contractor of any duty or liability under the Contract nor does it create any duty or liability on the part of the District. The Contractor shall have sole responsibility for promptly settling any disputes between Subcontractors and between the Contractor and any Subcontractor.

ARTICLE 14 CONDITIONS AFFECTING THE WORK

Section 14.1. **Pre-Contract Examination.** Contractor represents that prior to entering into the Contract, it has conducted such investigation, so as to fully and completely ascertain to its satisfaction the nature and location of the Work, the nature of the Work Site, including the nature and location of utility lines whether in service or abandoned, conditions relating to the transportation, handling and storage of materials, availability of labor, the effect of any labor agreements to which the District is a party, water, roads, weather, topographic conditions, work performed pursuant to other separate contracts which may be or which have been entered into by the District relating to the land and buildings constituting or which will constitute the Project which may affect the Work of the Contractor and which will require scheduling and coordination efforts by the Contractor, applicable provisions of law, and the character and availability of equipment, material and facilities needed prior to and during prosecution of the Work. Contractor acknowledges that it accepts the Work Site, including subsurface conditions, as is, without representation or warranty of any kind.

The District and the Architect of Record assume no responsibility for the accuracy, reliability, and completeness of any information furnished with respect to site conditions. These data were obtained for the District's use in designing the Project and are made available to the Contractor for informational purposes only and do not form a part of the Contract, and further do not constitute a representation by the District or anyone that such information is accurate or complete. Assumptions and conclusions derived from the data in no way relieve the Contractor from the responsibility of fulfilling the requirements of the Contract. The Contractor, at its own expense, may make additional surveys it deems necessary.

The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials, conditions, or obstacles or utility lines to be encountered insofar as this information is ascertainable from an inspection and/or examination of the Work Site or the Bid Documents, including all exploratory work done by the District, as well as from the Drawings and Specifications made a part of the Contract and Contractor shall be deemed to have knowledge of such information.

Any failure of the Contractor to take the actions described and acknowledged in this Article 14 will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to perform the Work for the Contract Sum and within the Contract Time and shall not give rise to any right on the part of the Contractor to an adjustment of Contract Sum or Contract Time.

The District assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the District. Nor does the District assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of the Contract, unless that understanding or representation is expressly stated in the Contract Documents.

ARTICLE 15 CONSTRUCTION SAFETY

Section 15.1.

Contractor Responsibility. The Contractor is responsible for the health and safety of its employees, agents, Subcontractors and other persons on and adjacent to the Work Site, including without limitation tenants of the Pittsburgh International Airport and their invitees, and it is also responsible for the protection and preservation of the Work and all materials and equipment to be incorporated therein, the Work Site and the area surrounding the Work Site. Contractor acknowledges that the

Pittsburgh International Airport will continue to operate throughout the performance of this Contract. The Contractor shall take all necessary and reasonable precautions and actions to protect all such persons and property. Such actions include but are not limited to:

- 15.1.1. Compliance with all safety policies, programs and measures initiated by the District (including substance abuse testing) and with all applicable laws, ordinances, rules, regulations and orders of any public District for the safety of persons or property, including, but not limited to, the Code of Federal Regulations Title 29, Part 1926 and applicable portions of CFR 29, Part 1910 Titled "Occupational Safety and Health Standards".

It is also agreed that the Contractor shall be responsible for supplying and implementing a safety program which provides for complete fall protection for all of its workers (including its subcontractors, erectors, agents, etc.) exposed to falls above six (6) feet. The Contractor is responsible for ensuring that this and all other safety policies/guidelines are incorporated into any subcontractors, or lower tier contractors, which it may enter into on this Project.

- 15.1.2. Submit to the District prior to performing any work on the Work Site, a written safety program in full compliance with the requirements of this Article and which is consistent with applicable federal, state, and local laws, regulations, rules, regulations or orders.
- 15.1.3. Implementation of all practices, procedures and programs customarily implemented by construction contractors for projects of a similar nature; and
- 15.1.4. Such other actions as may be deemed prudent by the District and the District's insurance carriers which are not less stringent than the latest applicable laws, statutes, ordinances, rules, regulations and/or orders.
- 15.1.5. Such other actions as may be deemed prudent by the District for the protection of its invitees.
- 15.1.6. The Contractor shall include a Hazardous Communication Standard Policy in its written safety program submitted pursuant to **Paragraph 15.1.2** above. The policy shall conform to the criteria set forth in OSHA Standard 1926.59, as it may be revised throughout the life of the Project. The Contractor and Subcontractors of every tier shall submit Material Safety Data

Sheets (“MSDS”) in duplicate to the District for all materials for which an MSDS is required prior to bringing such materials onto the Work Site. The Contractor shall maintain an up-to-date master file of all MSDS sheets submitted by it and its Subcontractors of any tier, which file shall be available for inspection at the Work Site.

The Contractor shall provide a Hazardous Substance Survey Form (“HSSF”) listing any and all of the Hazardous Materials which the Contractor may use or bring within or near the Work Site.

The MSDS and HSSF described hereinabove are submitted to the District for the use of the District and its Consultants and their submittal by the Contractor to the District and its Consultants shall not relieve or reduce the Contractor’s responsibility under applicable regulations.

- Section 15.2. **Broad Construction.** This **Article 15** is to be construed in its broadest sense for the protection of persons and property by the Contractor and no action or omission by the District, the Managing Architect, the Architect of Record or the Architect of Record’s Consultants shall relieve the Contractor of its responsibility for the safety of persons and property and compliance with all latest laws, statutes, ordinances, rules, regulations and/or orders of any public District (federal, state or local) applicable to the conduct of the Work, or of any of its obligations and duties hereunder.
- Section 15.3. **Administration of Safety Program.** The Contractor and each Subcontractor shall assign an individual responsible for its safety program and first aid, and shall administer its own first aid for minor injuries and provide for medical treatment of any injured employee of the Contractor.
- Section 15.4. **Contractor Responsibility for Plant, Appliances, Equipment and Methods.** The Contractor shall be solely responsible for the safety, efficiency and adequacy of his plant, appliances, equipment and methods and for any damage which may result from their failure or their improper construction, maintenance or operation.
- Section 15.5. **Duty to Indemnify.** The Contractor shall indemnify and hold harmless the District, the Managing Architect, and the Architect of Record and any of their respective members, officers, employees, agents, consultants and representatives from any liability, claim, loss, or expense (including any civil or criminal fines or penalties as well as any attorney’s fees resulting therefrom) arising out of or in connection with the failure or neglect of the Contractor to comply with the requirements of this **Article 15** as well as the failure to comply with the requirements of any applicable law, rule or regulation.

ARTICLE 16 EMERGENCIES

In an emergency affecting the safety or health or life, the Work, or adjacent property, the Contractor shall notify the District as early as possible that an emergency exists. In the meantime, absent special instruction from the District as to the manner of dealing with the emergency, the Contractor shall act at his own discretion to prevent such threatened loss or injury. As emergency work proceeds, the District may issue instructions, which the Contractor shall follow. The amount of compensation to which the Contractor is entitled on account of emergency work will be determined in accordance with Article 47, CHANGES.

ARTICLE 17 HAZARDOUS SUBSTANCES

Section 17.1. **Contractor Responsible for Waste Materials.** Unless otherwise specified in the Contract, the Contractor shall make its own arrangements for disposing, outside the Work Site, of waste and excess materials brought to the Work Site or created on the Work Site by the Contractor, including but not limited to toxic or Hazardous Substances, and it shall pay all costs therefor. Contractor shall dispose of hazardous or toxic materials using a qualified removal Subcontractor. Prior to disposing of material outside the Work Site, the Contractor shall obtain written authorization from the owner on whose property the disposal is to be made. The Contractor shall file with the District said authorization, or a certified copy thereof, together with a written release from the property owner indemnifying the District and its agents and consultants against any and all liability which could arise in connection with the disposal of material on said property. Contractor agrees that its failure to strictly comply with the provisions shall be an act of default under the Contract.

Section 17.2. **Subcontractors Performing Pollution or Hazardous Materials Related Activities.** Any subcontractor performing pollution or hazardous materials related activities pursuant to the Contract Documents shall provide insurance as follows:

17.2.1. Pollution or Environmental Impairment Liability with a combined single limit of \$5,000,000 each occurrence for Bodily Injury and/or Property Damage. As an alternative to a Pollution/Environmental liability policy, this requirement can be met by having certification that the subcontractor's liability policies do not have a pollution or environmental exclusion applicable to them other than the accepted nuclear exclusions.

Section 17.3. **Materials Discovered at the Work Site.** In the event that the Contractor encounters, on the Work Site or within or near the Project Limits, pre-

existing materials, not placed on the Site by the Contractor, which the Contractor reasonably believes to be toxic or hazardous, including but not limited to asbestos, or polychlorinated biphenyl, for which no express provision has previously been made in the Contract Documents, then Contractor shall immediately stop work in the affected area and report the condition to the District in writing. At the request of the District, Contractor shall remove and dispose of such hazardous or toxic materials using a qualified removal Subcontractor and Contractor shall cause such removal Subcontractor shall obtain at its sole cost insurance pursuant to **Paragraph 17.2.1** hereof. In the event of unforeseen delays on the critical path of the Project Schedule caused solely and exclusively by discovery of Hazardous Materials not identified at the commencement of the Work, the Contractor may be entitled to an extension of time in accordance with the provisions and subject to the limitations of **Article 40, DELAYS, SUSPENSION OF WORK; EXTENSION OF TIME.**

ARTICLE 18 EXPLOSIVES AND BLASTING PROHIBITED

The use of explosives and/or blasting shall not be permitted at the Work Site.

ARTICLE 19 USE OF THE DISTRICT'S NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS

The District reserves the right to review and approve in writing all District-related copy prior to publication as well as any District-related public statements and public discussions to be made by the Contractor any of its subcontractors, agents, officers, members or employees. The Contractor shall not allow District-related copy to be submitted to any trade association, seminar sponsor or other public discussion group or be published in Contractor's advertisement or public relations programs until submitting the District-related copy and receiving prior written approval from the District. All information shall be factual and in no way imply that the District endorses the Contractor's firm, service, or product.

ARTICLE 20 BONDS

Section 20.1.

Time Due and Form. Within five (5) days after Notice of Award of the Contract given by the District to the Contractor, and prior to or concurrently with execution of the Contract, the Contractor shall file with the District surety bonds satisfactory to the District in the amounts and for the purposes noted in this Article. The Bonds shall be executed by a responsible surety company or companies qualified to do business in Delaware and shall name the District as obligee. Bonds shall be in the

form as included in the Bid Documents, shall guarantee the performance of the Work, and shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State and secured through an authorized agent. The Contractor shall pay all Bond premiums, costs, and incidentals. No payment will be made to the Contractor until the Bonds have been approved by the District and the Managing Architect.

Section 20.2. **Requisite Signatures on Bonds.** Each Bond shall be signed by both the Contractor and the surety and the signature of the authorized agent of the surety shall be notarized.

Section 20.3. **Types of Bonds.** In addition to the bid bond or other security described in the Instructions to Bidders, the Contractor shall provide two good and sufficient surety Bonds:

20.3.1. The “Performance Bond” shall be for one hundred percent (100%) of the Contract Sum to guarantee faithful performance of the Contract, within the Contract Time, in a manner satisfactory to the District, and that all materials and workmanship will be free from original or developed defects. The bond shall be maintained by the Contractor in full force and effect until Final Completion of the Project.

In addition, the bond shall guarantee the faithful performance of the Contractor’s duty to repair defects in materials and workmanship for a period of one (1) year from Final Completion of the Work.

20.3.2. The “Payment Bond” shall be for not less than one hundred percent (100%) of the Contract Sum, for the protection of claimants supplying material or labor to the Contractor or to any of Contractor’s subcontractors, and until all claims for materials and labor are paid.

Section 20.4. **Renew or Replace When Insufficient/Unsatisfactory.** Should the District, for justifiable cause, deem at any time a bond to become insufficient, the Contractor shall renew or replace the bond within ten (10) days after receiving notice from the District.

Should any surety at any time be unsatisfactory to the District, notice will be given to the Contractor to that effect. No further payments in respect of the Contract Sum shall be deemed due or will be made under the Contract until a new surety shall qualify and be accepted by the District. The premiums on such new Bond shall be paid by the Contractor.

Section 20.5. **No Release Upon Changes.** Neither the failure of the District to retain any percentage payable to the Contractor, nor change in, or variation of, the terms of the Contract inclusive of the grant of an extension of time,

shall release or discharge, to any extent whatsoever, the surety or sureties upon any bond given by the Contractor hereunder. Notice of changes or extensions of time shall be waived by the surety.

Section 20.6. **Surety and Contractor Both Liable.** The surety for the Contractor shall be jointly and severally liable under its Performance and Payment Bonds. The Surety and Contractor shall be bound by the resolution of any dispute under the Contract whether in arbitration or litigation to the same extent as the Contractor, regardless of whether or not the Surety participates in such arbitration or litigation.

ARTICLE 21 PUBLIC RECORDS

Section 21.1. **Public Disclosure.** All records, documents, drawings, plans, specifications, and other material relating to the conduct of the District's business, including materials submitted by prospective or actual Bidders, may be subject to public disclosure.

Section 21.2. **Confidential Information.** During the course of the pre-bidding and bidding process or the course of the Work under any contract awarded, the District will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" as determined by the submitting party. The District will endeavor to advise the submitter of any request for the disclosure of such materials. Under no circumstances, however, will the District be responsible or liable to the submitter or any other party for the disclosure or non-disclosure of any such labeled materials, whether the disclosure or non-disclosure is deemed required by law, by an order of court, or by contract or occurs through inadvertence, mistake or negligence on the part of the District, the Managing Architect, the Architect of Record, or any of them or their officers, employees, Consultants, contractors, agents or representatives.

The District will not advise as to the nature or content of documents entitled to protection from disclosure under State or local law, rule or regulation, as to the interpretation of that law, rule, or regulation, or as to the definition of trade secret. The submitting party shall be solely responsible for all determinations made by it under same, and for clearly and prominently marking each and every page or sheet of materials with "TRADE SECRET" or "CONFIDENTIAL" as it determines to be appropriate. Each submitting party is advised to contact its own legal counsel concerning such laws, rules or regulations and their application to the submitting party's own circumstances.

Section 21.3. **The District's Role as Stake Holder.** In the event of litigation concerning the disclosure or non-disclosure of any material submitted by the submitting party, the District's sole involvement will be as a stake

holder retaining the material until otherwise ordered by a court, and the submitting party is responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk.

ARTICLE 22
WORKMANSHIP AND UNAUTHORIZED WORK

Section 22.1. **Required Skill; Removal of Employees.** All Work under this Contract shall be performed in a skillful and workmanlike manner. All workers shall have sufficient skill and experience to perform the Work assigned to them. Any employee who is determined by the District to be intemperate, incompetent, a threat to the safety of persons or the Work, or who fails or refuses to perform the Work in a manner acceptable to the District shall be promptly removed from the Work Site by the Contractor, and shall not be reemployed on the Work or otherwise under the Contract.

Section 22.2. **Unauthorized Work.** Any Work performed which is not in conformance with the Contract Documents or is beyond the lines and grades shown on the Drawings, or any extra work done without written District from the District will be considered as unauthorized and at the sole expense of the Contractor. Work so done will not be measured or paid for, and no extension in Contract Time shall be granted on account thereof and may be ordered removed at the Contractor's expense. The failure of the District to order such work removed does not constitute acceptance or approval of such work or relieve Contractor from any liability on account thereof.

Section 22.3. **Removal of Unauthorized Work by the District.** Upon failure of the Contractor to comply with any order of the District to remove such work, the work may be removed by the District at the Contractor's sole expense.

ARTICLE 23
WARRANTY OF WORK

Section 23.1. **Warranty Made.** In addition to other warranties made as provided by law or as provided in the Specifications, the Contractor warrants that all Work under the Contract (which for purposes of this Article shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material or workmanship.

Section 23.2. **Correction of Warranted Work.** The Contractor agrees that for a period of one (1) year (or such longer period of time as may be specified elsewhere in the Contract Documents or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work) after the date of Final Completion of the Contractor's Work the Contractor shall, within ten (10) days after being

notified in writing by or on behalf of the District of any defect in the Work or of any non-conformance of the Work to the Work called for under the Contract Documents, take whatever steps are necessary to fulfill the terms of the warranty at its sole cost and expense. In addition, Contractor shall, at its sole cost and expense repair and replace any portions of the Work (or Work of other contractors on the Project) damaged by such defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, the Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one (1) year period commencing with the date of acceptance of such corrected work.

Section 23.3. **Warranties and Guarantees of Subcontractors and Suppliers.** All warranties and guarantees of Subcontractors, Suppliers and manufacturers with respect to any portion of the Work shall be obtained by the Contractor for the benefit of and in the name of the District. The Contractor shall use its best efforts to obtain from all manufacturers and Suppliers guarantees and warranties upon the best terms and longest periods available. The Contractor shall enforce such warranties and guarantees on behalf of the District. The Contractor shall cause its subcontractors and Suppliers to include in their subcontracts and purchase orders the requirement that all guarantees and warranties be obtained in the name of the District, which obligation shall be specifically incorporated by reference into any subcontracts, or any lower tier subcontracts or purchase orders. The Contractor shall be jointly and severally liable for any such warranties or guarantees. To the extent that any such warranty or guaranty would be voided by reason of the Contractor's negligence in incorporating material or equipment into the Work, the Contractor shall be responsible for correcting such defect and shall nevertheless be responsible pursuant to the guarantee obligations set forth herein.

Section 23.4. **District's Right to Correct Defective Work.** In the event that the Contractor fails to perform its obligations under this Article (or under any other warranty or guarantee under this Contract) to the reasonable satisfaction of the District and Architect of Record, the District shall have the right to correct and replace any defective or non-conforming Work at the Contractor's sole expense. The Contractor shall be obligated to fully reimburse the District for any expenses incurred hereunder upon demand.

Section 23.5. **Surety and Contractor Both Liable.** The surety for the Contractor shall be jointly and severally liable under its Performance Bond to the District in the event that the Contractor is in breach of its warranty obligations hereunder.

Section 23.6. **Emergencies.** Notwithstanding the foregoing, in the event of an emergency constituting an immediate hazard to the health or safety of

District employees, its property or that of its licensee, the District may undertake at the Contractor's expense and without prior notice, all work necessary to correct such hazardous condition when it was caused by work of the Contractor not being in accordance with the requirements of this Contract.

Section 23.7. **Non-Exclusive Remedy.** The rights and remedies of the District provided in this Article are in addition to and do not limit any rights and remedies afforded by the Contract or by law.

ARTICLE 24 INSPECTION

Section 24.1. **Inspections by the District, the Managing Architect, and the Architect of Record.** Work will be subject to inspection and test by the District, the Managing Architect, and the Architect of Record at all reasonable times and at all places. Such inspection and test is for the sole benefit of the District and shall not relieve the Contractor of the responsibility of providing quality control measures to assure that the Work complies with the Contract.

Except to the extent specified in writing by the District, no inspection or test by the District, the Managing Architect and/or Architect of Record shall be construed as constituting or implying acceptance. Inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to Final Acceptance of the completed Work.

Section 24.2. **Contractor Participation in Inspection.** The Contractor shall promptly furnish, at its own expense, all facilities, labor and material needed for performing such inspections and tests as may be required or specified. The Contractor shall give the District notification of inspections and tests and the District will perform, except as otherwise specifically provided, said inspections and tests in such manner as not to unreasonably delay the Work. The District will have the right to charge to the Contractor any additional cost of inspections or tests when material or workmanship is not ready at the time indicated in the Contractor's notification for inspection or test or when reinspection or retest is necessitated by prior rejection.

Section 24.3. **Rejection of Work Done Without Inspection.** If any Work should be covered up without approval or consent of the District, it must be uncovered for inspection and properly restored at the Contractor's expense. Reexamination of any Work may be ordered by the District, and if so ordered, the Work must be uncovered by the Contractor. If such Work is found to be in accordance with the Contract, the District shall pay the cost of reinspection and replacement. If the Work is not in accordance with the Contract, the Contractor shall pay such costs.

- Section 24.4. **Access for Inspection.** To facilitate inspections and supervision, the District shall have access to the Work during construction. Work done and materials provided will be subject to the District's on-site and off-site inspection and approval. When Work is to be performed during hours other than during its normal schedule, the Contractor shall so advise the District in writing not less than 24 hours in advance.
- Section 24.5. **Contractor Not Relieved of Obligations.** Inspection and approval of Work or materials by the District, the Managing Architect or the Architect of Record shall not relieve the Contractor of any of its obligations to fulfill the requirements of the Contract. Work and materials not meeting the requirements of the Contract shall not be incorporated into the Work. Work or materials not in accordance with the requirements of the Contract may be rejected by the District, notwithstanding that such work for materials may have been previously inspected by the District, the Managing Architect and/or the Architect of Record, or that payment therefor has been included in a progress payment.
- Section 24.6. **Access for Government and Utility Officials.** The Contractor shall provide access to the Work to authorized representatives of Federal, State and local governments and utilities for the purpose of observing the Work associated with their respective interests.
- Section 24.7. **Plant Inspection.** The District, and the Architect of Record may inspect the production of material and the manufacture of products to be incorporated into the Project, at the manufacturer's plant. The District and the Architect of Record shall have free entry at all times to such parts of the plant as concern the manufacture or production of the materials. Adequate facilities shall be furnished to make the necessary inspection; however, the District and/or the Architect of Record will not be obligated to inspect materials at the source of supply. The responsibility of incorporating satisfactory materials in the Work rests entirely with the Contractor, notwithstanding any prior inspections or tests. The Contractor shall have appropriate provisions inserted into each subcontract or agreement it enters into to provide for in-plant inspection of the manufacture or production of materials or equipment by the District.

ARTICLE 25 MATERIAL, EQUIPMENT AND PRODUCTS; ALTERNATIVES

- Section 25.1. **Contractor's Obligation to Furnish Materials and Equipment; Quality.** The Contractor shall furnish all materials, equipment and products required to complete the Work except those designated to be furnished by the District, if any. Unless otherwise indicated in the Contract, equipment, material and products incorporated in the Work covered by the Contract shall be new and of the grade specified for the purpose intended. Unless otherwise specifically indicated, reference to

equipment, material, product, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may, at its option, submit any equipment, material, article, or process which is equivalent to that named, subject to the requirements of Section 25.5.

Section 25.2. **Conforming Materials Only to be Used.** Notwithstanding prior inspection and approval by the District, only materials conforming to the requirements of the Contract shall be incorporated in the Work. The materials shall be manufactured, handled and incorporated so as to ensure completed Work in accordance with the Contract. Materials not conforming to the requirements of the Contract are hereby deemed to be rejected, in place or not, and regardless of whether or not such materials have been expressly rejected by the District.

Section 25.3. **Duty to Preserve Quality.** All materials shall be transported, handled, and stored by the Contractor in a manner which will ensure the preservation of their quality, appearance and fitness for the Work. All materials shall be stored in a manner to facilitate inspection.

Section 25.4. **Duty to Make Arrangements.** The Contractor shall make all necessary arrangements with the owners of material sources. The Contractor shall pay all costs in connection with making such arrangements, exploring, developing and using material sources, whether or not indicated, except such costs as the District expressly agrees in writing to assume. The District shall have no responsibility to the Contractor concerning local material sources other than the responsibility involved in the designations of suitability for intended use.

Section 25.5. **Alternative Materials and Equipment.** The Contractor may propose the use of alternative equipment, materials, articles or systems, provided that same will perform in a manner substantially similar to those called for in the Bid Documents. The Architect of Record shall be the judge of the quality and suitability of proposed alternative equipment, materials, articles or systems, subject to the power of the District to accept or reject such determination.

Any such proposals shall be made at least fifteen (15) days prior to bidding. The burden of proving the quality and suitability of an alternative shall be upon the Contractor. Information required by the Architect of Record in judging an alternative shall be supplied in written form by the Contractor at the Contractor's expense prior to bidding. The Contractor shall certify in its proposal the cost change and schedule change, if any, which will result if the proposal is accepted by the Architect of Record. Any approved alternative will be issued in the form of an Addendum. In evaluating the suitability of an alternative, the costs associated with any redesign shall be taken into consideration.

- Section 25.6. **Written Request Required.** No action relating to the approval of alternative materials will be taken by the Architect of Record until the request for substitution is made in writing by the Contractor accompanied by complete data as to the quality and suitability of the materials proposed. Such request shall be made in ample time to permit approval without delaying the Work. Approval by the Architect of Record shall not relieve the Contractor of its duty to use only conforming materials in the Work.
- Section 25.7. **Necessary Data.** Where classification, rating, or other certification is a part of the specification for any material, proposals for use of alternative materials shall be accompanied by reports from the listed body, or equivalent independent testing laboratory, indicating compliance with Specification requirements. Testing required to prove equality of the material proposed shall be at the Contractor's expense.
- Section 25.8. **Use Limited After Approval.** Approval of an alternative material will be only for the characteristics and use named in such approval, and shall not change or modify any Contract requirement, or establish approval for the material to be used on any other Contract, except as may be expressly set forth in the Addendum approving the proposed alternative.
- Section 25.9. **Other Clauses.** Additional provisions for approval of alternative material may appear in other sections of these Contract Documents.
- Section 25.10. **District Furnished Materials.** Materials furnished by the District, if any, will be available at the location specified in the Technical Specifications. Material furnished by the District shall be stored and transported to the place of use by the Contractor at its expense, including necessary loading and unloading. The Contractor's costs for storing, transporting, handling, protecting, and installing District-furnished material shall be included in the Contract Sum and paid for when such material is installed. The Contractor shall be responsible for materials furnished to it, and shall pay for storage charges incurred as a result of its failure to take delivery of District-furnished material on the assigned date. The Contractor shall be liable to the District for the cost of replacing or repairing District-furnished material lost or damaged from any cause whatsoever after receipt by the Contractor or after the Contractor has failed to take delivery after the assigned date. The costs will be deducted from any monies due or to become due to the Contractor, except those amounts covered under any claims payments made under insurance policies furnished by the District. In cases where lost or damaged material was not evident at the time such materials were received by the Contractor, the Contractor will be afforded the same protections by the District as the District has received from the original shipper and manufacturer. The District, in addition, agrees to provide the Contractor with all necessary assistance in

communicating with the manufacturer of any District furnished materials which fail to function properly once installed.

ARTICLE 26
REJECTED WORK OR MATERIALS

- Section 26.1. **Removal and Replacement.** Rejected Work or materials shall be immediately removed from the Work Site, and the Contractor shall promptly thereafter replace such rejected materials and shall repair and replace contiguous Work (including work of other contractors or the District) which is damaged in the course of the removal and replacement of the non-conforming material, all at the Contractor's sole expense and without any extension of Contract Time unless the District consents in writing in a Change Order to accept such material or workmanship with an appropriate reduction in Contract Sum. The Contractor shall promptly segregate and remove rejected material from the Work Site at its own expense and without any extension of Contract Time.
- Section 26.2. **Remedies for Non-Compliance.** If the Contractor fails to promptly and satisfactorily comply with a request by the District to remove and replace nonconforming materials and damaged Work, the District at its sole option:
- 26.2.1. may cause the removal and replacement of such material and Work and charge the cost thereof to the Contractor; or
- 26.2.2. may terminate the Contractor's right to proceed in accordance with the default provisions of **Article 52, TERMINATION FOR FAILURE TO PROCEED.**
- Section 26.3. **No Subsequent Use.** No rejected material, the defects of which have been subsequently corrected, shall be used in the Work, unless approved in writing by the District and unless the Contractor furnishes to the District such additional warranties and guarantees as the District may deem proper.
- Section 26.4. **Additional Architectural/Engineering Costs.** Any extra Architectural or engineering costs or testing costs incurred as a result of evaluating, examining, redesigning, or retesting of nonconforming work will be borne by the Contractor, regardless of whether the District accepts such nonconforming work.

ARTICLE 27
DAMAGE TO THE WORK AND RESPONSIBILITY FOR MATERIALS

- Section 27.1. **Contractor's Responsibility.** The Contractor shall be solely responsible for materials delivered and Work performed until Final Completion of the Work, except those materials and Work which may have been accepted

under **Section 27.4** provided, further, that the Contractor shall remain responsible for any Punch List work until such work is approved and accepted by the District. The Contractor shall provide security and drainage and erect temporary structures as necessary to protect the Work and materials from damage. The Contractor shall bear the risk, to the extent not covered by insurance, of injury, loss or damage to any and all parts of the Work, including the Contractor's tools, materials and equipment, for whatever cause, whether arising from the execution or from the non-execution of Work, except as provided for in **Section 27.4**.

Section 27.2. **Restore or Replace.** The Contractor shall promptly rebuild, repair or restore Work and materials which have been damaged or destroyed from any causes before Substantial Completion of the Work and shall bear the expense thereof.

Section 27.3. **Responsibility for Delivered Materials.** The Contractor shall be responsible for all delivered materials, whether or not delivered to the Work Site. The Contractor's responsibility includes all material regardless of whether such material was purchased by the Contractor, or furnished by the District.

Section 27.4. **Relief Upon Final Completion of Portions of the Work.** The District may, in writing, upon written request from the Contractor, relieve the Contractor of the duty of maintaining and protecting certain portions of the Work, as described in this sub-article. Such action by the District will relieve the Contractor of responsibility for injury or damage to said completed portions of the Work resulting from use by the District or the public for any cause, but not from injury or damage resulting from the Contractor's own operations or negligence or from defective work, with respect to any of which Contractor shall have an obligation to indemnify the District as provided in **Article 9, LIABILITY AND INDEMNIFICATION**. Notwithstanding the District's use of a portion of the Work, this Section 27.4 does not relieve the Contractor of responsibility for repairing or replacing defective Work or materials in accordance with the Contract requirements.

Section 27.5. **Duty to Protect Work of All Contractors.** During construction, and until Substantial Completion of the Work, the Contractor shall protect and be responsible for all Work performed by it. The Contractor shall protect its Work immediately after installation. The Contractor must show care and diligence not to damage the work of other contractors, or the property of tenants of the Pittsburgh International Airport. If, in the sole opinion of the District, the Contractor fails to comply with this requirement, then the Contractor shall be liable for all necessary repair costs.

**ARTICLE 28
USE AND POSSESSION PRIOR TO COMPLETION**

Section 28.1. **Generally.** The District shall have the right to take possession of or use any completed or partially completed portions of the Work. The Contractor specifically acknowledges that the District's right to take possession hereunder is not contingent upon whether progress payments have been made for such Work. Such occupancy or use shall not modify or relieve the Contractor from any of its obligations under the Contract Documents, including but not limited to the Contractor's obligation to warrant such Work from the date of Final Completion of the Work provided, however, that the Contractor shall not be responsible for any damage to the Work resulting from the District's occupancy or use thereof. If such prior possession or use by the District unreasonably delays the progress of the Work, an adjustment in the Contract Time will be made, as provided in **Article 40, DELAYS; SUSPENSION OF WORK; EXTENSION OF TIME**, and the Contract will be modified in writing accordingly.

**ARTICLE 29
PERMITS AND COMPLIANCE WITH LAWS**

Section 29.1. **Non-Discrimination.** The Contractor shall not discriminate in its employment practices on the basis of race, sex, creed, color, religion or national origin.

Section 29.2. **Compliance with Laws.** The Contractor acknowledges that it has familiarized itself with the requirements of any and all applicable Federal, State, County and Municipal laws, statutes, codes, rules and regulations and the conditions of any required licenses and permits prior to entering into this Contract. The Contractor shall be responsible for complying with any and all of the foregoing at its sole cost and expense and without any increase in Contract Sum or Contract Time on account of such compliance regardless of whether such compliance would require additional labor, equipment and/or materials not expressly provided for in the Contract Documents.

Section 29.3. **Contractor to Obtain Permits.** Except for those permits furnished by the District as listed in the Contract Documents, the Contractor shall be fully responsible for identifying and obtaining, at its own expense and with the assistance of the Architect of Record, all necessary licenses and permits in connection with the prosecution of the Work.

Section 29.4. **Owner-Furnished Permits and Licenses.** The District shall obtain, for the benefit of the Contractor and others, the following permits and licenses:

29.4.1. Building permit authorizing construction, including foundation permit.

**ARTICLE 30
RIGHTS IN LAND AND IMPROVEMENTS**

The Contractor shall make no arrangements with any person to permit occupancy or use of any land, structure or building within the Work Site for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the District and any owner, former owner or tenant of such land, structure or building. In no event shall the Contractor permit any area within the Work Site to be occupied by any person for purposes other than those related to the Project and except as otherwise provided in the Contract. The Contractor shall not occupy District-owned property outside the Work Site without obtaining the prior written approval of the District.

**ARTICLE 31
SHOP DRAWINGS, SAMPLES AND PRODUCT DATA**

Section 31.1.

Submission and Schedule of Shop Drawings. The Contractor is primarily responsible for the preparation, coordination, review, approval and submittal of Shop Drawings, Product Data and Samples. Throughout the remainder of this Article 31, the term Shop Drawings shall be construed to mean Shop Drawings, Samples and Product Data. The Contractor shall coordinate the preparation of all Shop Drawings required by the Contract Documents and shall do all things necessary to ensure that each Subcontractor preparing Shop Drawings properly coordinates such Shop Drawings with any other Shop Drawings that may affect the Subcontractor's Work. The Contractor shall review, approve and submit Shop Drawings to the Architect of Record with reasonable promptness and in such sequence as to cause no delay in the Work, the Project, the work of the District or any separate contractor.

The Contractor shall prepare, implement and regularly update a schedule for preparation and submission of Shop Drawings which shall be integrated, coordinated and made part of the Project Schedule. The schedule shall provide for appropriate turnaround times for the various trades.

The Contractor shall maintain a Shop Drawing Log that is computerized and automated so as to integrate with the Project scheduling system so that the Contractor's monthly update of the Progress Schedule showing drawing dates for submittal can be updated using a computer generated update file.

The Contractor shall cooperate with the District in coordination of the Contractor's Shop Drawings with those of the District's other contractors. The Contractor will review all Shop Drawings, determine their conformity with the Contract Documents, coordinate them with information contained in related documents and do any of the following, as appropriate: (i) transmit them to the Architect of Record; or (ii) make necessary corrections to the Shop Drawings and transmit them to the Architect of Record; or (iii) return them to the Subcontractor for revision and resubmission without transmitting them to the Architect of Record.

Section 31.2. **Submission by Contractor.** Before performing any of the Work and as required by the Project Schedule, the Contractor shall submit for the Architect of Record's review Shop Drawings for all elements of the Work as required to precisely indicate or describe the Work to be performed. The Shop Drawings shall show the arrangement of all elements of the Work in relation to the Drawings and shall provide for the proper functioning of all systems and adequate access for maintenance.

Section 31.3. **Form of Submission.** Shop Drawings shall be in the form as more particularly set forth in the Supplementary Conditions and shall contain such detail as the Architect of Record and the District shall require for purposes of review.

Section 31.4. **Professional Engineering Certification of Shop Drawings.** If the Specifications so require, the Contractor or its Subcontractor or Supplier shall retain or cause to be retained a Professional Engineer with the responsibility for the design and detailing of Shop Drawings in accordance with the provisions of this **Section 31.4**. The Contractor shall not submit nor shall the Architect of Record review any such Shop Drawings which have not been prepared under the supervision of and sealed by a Professional Engineer with responsibility for the design and detailing of such Shop Drawings.

The Professional Engineer retained by the Contractor for preparation and certification of Shop Drawings pursuant to this section:

- 31.4.1. shall be an independent consultant not affiliated with the Contractors;
- 31.4.2. shall not prepare or certify Shop Drawings for any work that will be constructed by the Professional Engineer or any affiliate of the Professional Engineer;
- 31.4.3. shall be licensed in Delaware;
- 31.4.4. shall be currently insured for professional errors and omissions liability; and

This **Section 31.4** does not apply to engineered elements provided by the Contractor which are not incorporated into the Work, including without limitation, formwork, sheeting and shoring, and crane foundations, for which the Contractor is solely responsible.

Section 31.5. **Verification of Data and Coordination.** Before submitting Shop Drawings, the Contractor shall verify materials, field measurements and construction criteria relating thereto, shall stamp them with its signed stamp certifying their completeness and compliance with the Contract Documents. Submission of Shop Drawings shall constitute the Contractor's representation that such verification has taken place and that the Contractor has coordinated the information contained therein with the requirements of the Work, the Project and the Contract Documents.

Section 31.6. **Review and Approval.** The Architect of Record will review and approve or take other appropriate action upon the Contractor's submittals of Shop Drawings but only for conformance with the design concept of the Work and the information given in the Contract Documents. To provide adequate time for processing, the Contractor shall submit Shop Drawings in accordance with the Project Schedule. The Architect of Record shall be allotted not less than fourteen (14) days for review of the initial submission of all Shop Drawings. If any Shop Drawing is returned to the Contractor marked "Rejected" or "Revise and Resubmit," Contractor shall be responsible for delays resulting from additional reviews by the Architect of Record, until such Shop Drawing is approved, unless such additional reviews were not caused by the Contractor or its Subcontractors or any Suppliers. The Contractor shall not perform any portion of the Work covered by or affected by such Shop Drawings until the Architect of Record has approved the same for construction in accordance with the procedures outlined in the Supplementary Conditions. The approval of Shop Drawings for any portion of the Work shall not be approval of any system of which it may be a part. Review or rejection of Shop Drawings, by the Architect of Record, does not constitute approval to increase or decrease the Contract Sum or Contract Time.

Section 31.7. **Contractor's Responsibility.** The review and approval of Shop Drawings by the Architect of Record shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents, unless the Contractor has specifically informed the Architect of Record and the District in writing of such deviation at the time of submission and the Architect of Record has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings by the Architect of Record's approval of them.

The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings to revisions other than those requested by the Architect of Record on previous submittals.

- Section 31.8. **Costs of Redesign or Changes to Other Parts of the Work Upon Approval of Shop Drawings.** Where the Contractor submits a Shop Drawing which deviates from the Contract Documents and which involves redesign or changes to other parts of the Work, or the work of other contractors, redesign costs relating thereto shall be at the Contractor's expense if the Contractor's submittal is implemented. Furthermore, the Contractor shall remain obligated to the District for the costs relating to changes in other parts of the Work as a result of the submittal even if such costs become known after the submittal is approved.
- Section 31.9. **Compliance with Drawings and Specifications.** Shop Drawings shall meet the requirements of the Drawings and Specifications. The Contractor shall include with any submission of Shop Drawings a clear description of the extent, if any, to which such submissions do not meet those requirements.
- Section 31.10. **Work to be Performed in Accordance with Approved Shop Drawings.** The Contractor shall carry out its Work in accordance with the approved Shop Drawings.
- Section 31.11. **Shop Drawings of Other Contractors.** It shall be the responsibility of Contractor to request, in writing, from the District copies of any Shop Drawings, or any other information, prepared by the District's other contractors that the Contractor deems necessary to properly coordinate its work. Contractor is solely responsible to coordinate all Shop Drawings prepared by the Contractor or its Subcontractors.

ARTICLE 32 RIGHTS IN SHOP DRAWINGS AND AS-BUILT DRAWINGS

- Section 32.1. **Property of the District.** Shop Drawings and As-Built Drawings, submitted to the Architect of Record by the Contractor or a Subcontractor pursuant to the Contract, are the property of the District, may be duplicated by the District and the District may use and disclose, in any manner and for any purpose, Shop Drawings and As-Built Drawings delivered under the Contract. Upon the conclusion or early termination of the Contract for any reason, the Contractor shall deliver such Shop Drawings and As-Built Drawings to the District upon demand.
- Section 32.2. **Flow Through to Subcontractors.** This Article, including this **Section 32.2** shall be included in all subcontracts hereunder at all tiers.

ARTICLE 33
COORDINATION AND ACCESS

Section 33.1. **Other Contracts.** The Contractor acknowledges that the District may undertake or award other contracts for additional work. In preparing its Bid, the Contractor has carefully reviewed those documents made available to it by the District relating to the scheduling and nature of other contracts which may be awarded and has submitted a proposal which takes into account the need to coordinate its work with that of other contractors. It is the express obligation and duty of the Contractor under the Contract to coordinate its Work with the work of other contractors.

Section 33.2. **Duty to Coordinate.** The Contractor shall not unreasonably impede, hinder or delay the District or any other contractor in the performance of its work. It is the Contractor's duty under the Contract to communicate, subject to the District's approval, with any contractor who will be performing work which may connect, complement, interfere with or otherwise be dependent upon the Contractor's Work and to resolve any disputes or coordination problems with such other contractor. All contractors responsible for Work defined in individual sections of the Project shall be responsible, jointly and severally, for coordinating their various sections of work as to scheduling, installation procedures, Shop Drawings and installation of related materials.

Provided that the Contractor does not thereby assume responsibility for acts or omissions of the other contractors, if requested to do so by the District, the Contractor shall review the actual progress of the other contractors work on a monthly basis and advise the District as to whether the Request for Payment submitted by any other contractor is in accordance with the actual progress of the corresponding work.

Section 33.3. **Contractors' Responsibility to Each Other.** In the event that any other contractor performing work should hinder, delay or damage the Contractor's Work or should otherwise cause loss or injury to the Contractor, Contractor agrees that it shall look solely to such contractor for relief therefor. To effectuate the provisions of this **Section 33.3**, Contractor acknowledges and agrees that such other contractors are intended third party beneficiaries of this Contract. Neither the District, the Managing Architect, nor the Architect of Record shall be responsible for any such hindrance, delay, damage, loss or injury, and the Contractor will, in no event, attempt to hold the District, the Managing Architect, or the Architect of Record liable for the costs thereof. The Contractor shall not make any claim for adjustment of Contract Sum or Contract Time, equitable or otherwise, against the District based on any of the foregoing. Similarly, the Contractor agrees that it will be responsible to any other contractor performing work related to the Project for any loss, injury, damage or delay including acceleration costs incurred as a result of delay

caused by the Contractor. The Contractor and its Performance Bond surety shall indemnify and hold harmless the District, the Managing Architect, and Architect of Record from and against any claim brought against any of them by another contractor including costs, expenses and attorneys' fees incurred by any of them as a result of the Contractor's alleged acts or omissions.

Section 33.4. **Duty to Notify of Defects in Other Work.** If any part of the Contractor's Work depends upon the work of any other contractor or the District for proper execution or results, the Contractor shall, prior to proceeding with such Work, promptly report to the District any discrepancies or defects in such other work that would render it unsuitable for proper execution and results. Failure to so notify the District shall constitute the Contractor's acceptance of such work as suitable and Contractor shall be responsible for the costs of correcting or repairing such other work.

ARTICLE 34 PROTECTION OF UTILITIES

Section 34.1. **Utilities.** The Contractor shall protect from damage active operating utilities at or near the Work Site and shall be responsible for the repair or restoration of any damage to such facilities resulting from failure to comply with the requirements of the Contract or the failure to exercise reasonable care in the performance of the Work. The Contractor shall comply with all applicable laws, statutes, regulations, ordinances, rules or orders of any public authority. If the Contractor fails or refuses to repair any such damage or to make any arrangements as required by this **Article 34** promptly, the District may have the necessary work performed and charge the cost thereof to the Contractor.

Section 34.2. **Protection of Utilities.** At points where the Contractor's operations are adjacent to utility facilities, damage to which might result in expense, loss, disruption of service or other undue inconvenience to the public or to the owners, Work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor. The Contractor shall be solely and directly responsible to the owners and operators of such utilities for any damage, injury, expense, loss, inconvenience, or delay, caused by the Contractor's operations.

Section 34.3. **Relocation of Utilities.** Where utilities or their appurtenances interfere with permanent construction, unless otherwise specified, Work involved in permanently relocating or otherwise altering such utilities and their appurtenances will not be a part of the Contract. If Contractor wishes to have any utilities temporarily relocated, it shall make necessary arrangements with the owners thereof and shall reimburse them at its own expense for the cost of such work. The Contractor shall keep the District advised of temporary relocation arrangements.

- Section 34.4. **Utility Repair.** The Contractor shall not repair or attempt to repair any damaged utility but shall immediately contact the utility owner. The Contractor shall obtain the name, address and telephone number of each utility company that the Work will affect and the person in such utility company to contact. It shall submit to the District said names, addresses and telephone numbers.
- Section 34.5. **Consideration of Obstructions in Bid and Work.** The Contractor agrees that it has made full provision in its Bid for costs and/or delays which may be incurred to remove and/or relocate existing utilities so that the Work can proceed in a particular area without an interruption to service on other areas.
- Section 34.6. **Duty to Minimize Utility Disruptions.** Where the operations of the Contractor will affect the Owner's operation and use of existing facilities or Owner-occupied portions of the Work, the Contractor will arrange its Work to minimize its effect on such areas, protect the District and the Architect of Record and others not directly involved in construction, renovation, demolition and equipping and will coordinate the timing, sequencing, and duration of the disruptions with the District and proceed with such Work only after receiving District to do so. It is agreed that such work shall be performed during non-working hours so as to minimize its impact on others.
- Section 34.7. **Unavoidable Interruptions of Service.** The Contractor shall at all times seek to avoid interruptions of utility services to the Project, unless it is absolutely necessary. When interruption of the services is unavoidable, the Contractor shall notify the District in writing fourteen (14) days in advance requesting permission for the interruption of utility services and identifying the length of time needed. Only after the Contractor receives the approval from the District shall it proceed with the Work. During the interruptions of services, the Contractor shall maintain communication with the District, and be ready to restore temporary service if any emergency arises. The Contractor shall continue its work on a twenty-four (24) hour basis, until such work is completed and the services restored.
- 34.7.1. During all renovation construction, the building must continue to function in a manner directed by the District. Accordingly, those Contractors must include in their bids the necessary costs to relocate the building services or provide new services in such a manner so that the renovation work can proceed in a particular area without an interruption to services in other active parts of the portion of the Project so affected.
- Section 34.8. **Compliance with Laws.** The Contractor shall comply with all applicable laws, regulations, codes and orders regarding precautions to be taken in

the protection of existing vegetation, structures, utilities, and improvements.

**ARTICLE 35
PATENT AND COPYRIGHT**

Section 35.1.

Warranty of Right to Use. The Contractor shall warrant that the materials, equipment or devices used on or incorporated in the Work shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If notified promptly in writing and given the District to proceed and information and assistance, the Contractor shall defend, or may settle, at its expense, any suit or proceeding against the District, the Managing Architect, or the Architect of Record so far as such suit is based on a claimed patent or copyright infringement which would result in a breach of this warranty and the Contractor shall pay all damages and costs awarded therein against the District, the Managing Architect, or the Architect of Record due to such breach. The Contractor shall report to the District promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of its Contract of which the Contractor has knowledge. In the event of any claim or suit against the District on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the District all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Contractor.

Section 35.2.

Contractor's Cost. The Contractor shall bear all costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in the Work. In any case in which materials, equipment, devices or processes are held to constitute an infringement and their use is enjoined, the Contractor, at his expense shall:

- 35.2.1. Secure for the benefit of District the right to continue using said materials, equipment, devices or processes by suspension of the injunction or by procuring a license or licenses; or
- 35.2.2. Replace such materials, equipment, devices or processes with non-infringing materials, equipment, devices or processes; or
- 35.2.3. Modify them so that they become non-infringing or remove the enjoined materials, equipment, devices or processes and refund the sum paid therefor without prejudice to any other rights of the District.

Section 35.3. **Public Use.** Patent rights arising out of the Work, as well as information, designs, specifications, know-how, data and findings shall be made available for public use, unless the District shall, in specific cases where it is legally permissible, determine that it is in the public interest that it not be so made available.

**ARTICLE 36
NOTICE TO PROCEED**

The District will issue a Notice to Proceed to the Contractor after the Contractor has executed the Contract and has delivered the Bonds and certificates of insurance specified in the Contract Documents. Except as specifically authorized in writing by the District, the Contractor is not authorized to perform Work under the Contract until the effective date of the Notice to Proceed. The Contract Time shall begin to run upon the effective date of the Notice to Proceed. Within three (3) days after the effective date of such Notice to Proceed, the Contractor shall commence Work and shall diligently prosecute the Work to Substantial and Final Completion within the time limits specified.

**ARTICLE 37
SCHEDULES AND REQUIREMENTS FOR MAINTAINING PROGRESS**

Section 37.1. The Contractor acknowledges as more fully set forth in Article 33, COORDINATION AND ACCESS of these General Conditions that the Contractor has a strict obligation to coordinate its work with the work of the District's other contractors. The Contractor further acknowledges:

- 37.1.1. that the District has entered into, or will enter into separate contracts for other portions of the Project; and
- 37.1.2. that the Contractor will coordinate the scheduling of its work, its access and use of the Work Site and the performance of its work with the activities of these other contractors.

Section 37.2. Time is of the essence for the Project and of this Contract. By submitting a Bid, the Contractor agrees that the Contract is based on a Contract Time set forth in the Owner/Contractor Agreement and that neither the District nor the Contractor shall be liable to the other party for any costs of delay provided that the Work is Substantially Completed within the Contract Time. The Contractor also understands that all Work must be performed in an orderly and closely coordinated sequence and the Contractor hereby agrees to perform its Work within the Contract Time, and in conformance with the Project Schedule, in accordance with the provisions of this Article 37.

Section 37.3. Contractor acknowledges that the Contract Time includes allowances for time lost due to foreseeable adverse weather conditions other than floods,

hurricanes, tornadoes, and the like. The Contractor understands and agrees that the Contractor shall not be entitled to any extension of the Contract Time, except as provided in and subject to the limitations of ARTICLE 40, DELAYS; SUSPENSION OF WORK; EXTENSION OF TIME.

Section 37.4.

The Contractor shall, within ten (10) calendar days after the District issues a Notice to Proceed to the Contractor, furnish its proposed Project Schedule which shall be consistent with the dates set forth in the Preliminary Project Schedule prepared by the Managing Architect. The Contractor shall meet with the Architect or Record to discuss the Contractor's proposed preliminary schedule information and the incorporation of the Contractor's proposed preliminary schedule information into the Project Schedule. The Contractor's preliminary schedule information, as approved by the District and the Architect of Record shall be incorporated into the Project Schedule by the Contractor. The Contractor shall perform its work strictly in accordance with the District approved Project Schedule.

The Contractor's proposed Project Schedule shall include at a minimum the following items:

- 37.4.1. Documentation of all major activities included in the Contractor's Work. This documentation shall indicate durations for all activities in working days and shall be in a format and at a level of detail which is acceptable to the District.
- 37.4.2. Identification of all precedent relationships between the Contractor's activities, as well as those of Subcontractors, based on a thorough review of the Contract Documents, showing interface between separate contractor's work.
- 37.4.3. Graphic diagrams indicating the proposed sequencing of Work.
- 37.4.4. Estimated crew sizes, equipment, production rates and similar data used to arrive at adequate durations and sequences. Contractor shall provide complete documentation with respect to the activity durations set forth on the schedule.
- 37.4.5. The schedule shall include activity descriptions and durations for preparation and processing of Shop Drawings, Product Data and Samples, fabrication, delivery and installation/erection of products, materials and equipment.
- 37.4.6. The schedule shall identify all Shop Drawings that are required by be prepared under the supervision of a registered Professional Engineer pursuant to **Section 31.4**.

37.4.7. The schedule shall show Substantial Completion of the Work within the Contract Time measured in calendar days after Notice to Proceed.

Section 37.5.

Review and Approval of Proposed Project ScheduleThe Contractor's proposed Project Schedule shall be subject to the review and acceptance of the District and the Architect of Record. By accepting the Contractor's proposed Project Schedule the District is not assuming any of the Contractor's responsibility for the timely and orderly completion of the Work and the coordination of the performance of the Contractor's Work with that of other contractors. The District's acceptance of the Contractor's proposed Project Schedule shall be for overall duration only and any adjustments made necessary by any error or inconsistency in same or by reason of the requirements of the orderly performance of the Work shall be made and the Work performed by the Contractor without additional compensation or extension of time.

Section 37.6.

Project Schedule UpdatesBeginning with the first month and continuing on a monthly basis throughout the term of the Contract the Contractor shall, as requested by the Architect of Record, update the status of its work with respect to the Project Schedule to show the actual progress of the Work, setting forth actual start and finish dates for each activity, and to show the projected schedule for completion of remaining Work required by the Contract. All approved Change Orders shall be incorporated into each update of the Project Schedule.

Contractor acknowledges that no update of any schedule shall serve to extend the Contract Time or modify the Project Schedule unless and until such change is approved by the District in a written Change Order.

- 37.6.1. Changing the logic of the schedules to reflect the progress of the work;
- 37.6.2. Developing a narrative for the reasons why logic changes were made;
- 37.6.3. Updating the individual Contractor activities; and
- 37.6.4. Integrating changed work into the schedules.

Section 37.7.

Work Shall be Performed in Accordance with Project Schedule. The Work shall be performed in accordance with the Project Schedule and Substantially Complete its Work within the Contract Time. The Contractor shall submit proposed schedule revisions and obtain written approval of the Architect of Record before deviating from the Project Schedule. If during the progress of the Work, Contractor determines that it will not be able to perform its work in accordance with the Project Schedule and Substantially Complete its Work within the Contract Time,

or if the Contractor is, at any time, behind in the Work based on the Project Schedule, or if in the opinion of the Architect of Record, the Contractor is delaying or failing to prevent delay by it or its Subcontractors in the progress of the Work necessary to perform the Work in accordance with the Project Schedule and Substantially Complete the Work within the Contract Time, the Contractor shall promptly submit to the Architect of Record a plan, including proposed schedule adjustments, if any, showing how the Contractor plans to mitigate impact upon other portions of the Work and the Project and how it plans to complete the late Work.

If the Contractor requests an extension of the Contract Time or adjustment of the Project Schedule, the Contractor's entitlement to such extension or adjustment shall be determined in accordance with **Article 40, DELAY, SUSPENSION OF WORK; EXTENSION OF TIME**. If the District determines that the Contractor is not entitled to an extension of Contract Time or adjustment of the Project Schedule, complete adherence to the Project Schedule and Substantial Completion of the Work within the Contract Time shall remain a requirement for the Contractor and the Contractor shall take such action as shall be necessary to bring the general progress of the Work into compliance with the Project Schedule. The cost and expense of overtime, or any additional measures, shall be borne entirely by the Contractor including the increased costs and damages to be incurred by the District and/or the separate contractors resulting from such overtime work or additional measures.

Section 37.8.

Remedies of the District. In addition to the foregoing:

- 37.8.1. If the Contractor shall fail to submit its proposed Project Schedule in proper form and substance within fifteen (15) days after Notice to Proceed, District shall be entitled to withhold Progress Payments pursuant to **Section 42.8**, hereof until such submittals have been made in proper form and substance; and
- 37.8.2. If the Contractor shall fail to achieve any Project Schedule milestone, as it may have been adjusted by Change Order, the Architect of Record shall have the right to order the Contractor to accelerate completion of the late activities by whatever means necessary without any additional cost to the District and the Contractor shall comply with same; and
- 37.8.3. If the Contractor shall fail to complete Work on the critical path of the Project Schedule by more than five (5) work days after the scheduled date, the Contractor shall submit to the Architect of Record for approval proposed adjustments, if any, which will allow future critical path dates to be met. If the Contractor fails

to submit proposed schedule adjustments or if the Architect of Record does not accept the proposed adjustments, the Architect of Record shall have the right to order the Contractor to accelerate completion of the late activities by whatever means necessary without any additional cost to the District and the Contractor shall comply with same; and

- 37.8.4. If the Contractor shall fail to achieve any Project Schedule milestones, or if the Contractor shall fail to complete Work on the critical path of the Project Schedule by more than seven (7) work days after the scheduled date, the Contractor shall submit to the Architect of Record for approval proposed adjustments, if any, which will allow future critical path dates to be met. In addition, the Architect of Record shall have the right to immediately order the Contractor to accelerate completion of the late activities and any activities which have been delayed by the late activities by whatever means necessary without any additional cost to the District and the Contractor shall comply with same. The District shall have the right to withhold future progress payments until the Contractor's progress is in compliance with the Project Schedule or until the District has approved, by Change Order, proposed adjustments to the Project Schedule or extension of the Contract Time. Any logic and/or schedule changes to improve overall progress and completion shall be subject to the review and acceptance of the District before revisions to the Project Schedule can be implemented.

Section 37.9. **Additional Remedies for Delay.** In addition to the foregoing responsibilities and liabilities of the Contractor, if the Contractor fails to Substantially Complete the Work within the Contract Time, as it may be extended pursuant to Article 40, DELAY, SUSPENSION OF WORK; EXTENSION OF TIME, the Contractor shall pay to the District damages for delay in accordance with the provisions of Article 39, DAMAGES RESULTING FROM CONTRACTOR'S DELAY, of these General Conditions.

Section 37.10. **Acceleration at the Expense of the District.** The District may request the Contractor to work overtime to expedite the completion of the Work or a portion of the Work, at a time when the Contractor is not in default of any of the provisions of the Contract. The Contractor agrees to work said overtime, and the Contractor shall be reimbursed only for the Contractor's extra labor cost over the amount for regular time during the period of such overtime, including additional fringe benefit costs, insurance and taxes incurred by it with respect thereto and only those other actual costs of the Contractor directly related to said overtime, which have been approved in advance by the District. Time slips

covering said overtime must be submitted to the District for checking and approval. No commission or fee is to be charged by or allowed to Contractor on account of overtime or costs related thereto, nor shall Contractor be compensated for any lost efficiency or production alleged to have resulted from said overtime work.

Section 37.11.

District Owns the Float. The Contractor, the Architect of Record and the District agree that use of schedule float, if any, shall be at the discretion of the Architect of Record. In no event shall the Contractor be entitled to an extension of time or additional compensation for delays to non-critical-path activities.

ARTICLE 38 RECORDS

In addition to its obligations to otherwise maintain books and records contained in the Contract, the Contractor shall furnish daily reports to the District in such form as the District may require, of the location and occupation upon the work of crews on the Work Site with the number of workers in each, and such other information regarding the Work as may be requested by the District. Contractor's failure to provide daily reports as required herein, shall entitle the District to withhold future progress payments until such reports have been provided.

ARTICLE 39 DAMAGES RESULTING FROM CONTRACTORS' DELAY

Section 39.1.

Damage to the District Upon Failure to Perform. If the Contractor's Work is not Substantially Completed within the Contract Time, and Finally Completed within thirty days thereafter, as it may be revised by Change Order, damage will be sustained by the District. In the case of Contractor's failure to Substantially Complete and/or Finally Complete the Work within the Contract Time, and therefore by the terms of this Contract, damage to the District will include but not be limited to, the following:

- 39.1.1. delays in the completion and operation of the Project;
- 39.1.2. unreasonable inconvenience to the public;
- 39.1.3. increased costs of Contract administration;
- 39.1.4. delays and increased costs to other contractors;
- 39.1.5. increased costs due to acceleration of other contractors necessary to mitigate effect of the Contractor's delay on completion of the Project; and

39.1.6. delays and increased costs to the District, the Managing Architect and the Architect of Record.

In the event that the Contractor fails to Substantially Complete its work within the Contract Time, and Finally Complete its work within thirty days thereafter, the parties acknowledge and agree that the District's damages would be difficult or impossible to accurately compute and that it is reasonable to estimate the damages as set forth in this **Article 41**. Therefore in the event that the Contractor fails to Substantially Complete the Work within the Contract Time, or fails to Finally Complete the Work within thirty days thereafter, the Contractor shall pay to the District the daily sum of _____ Thousand Dollars (\$ _____) in lieu of actual damages, as liquidated damages, and not as a penalty, for each day's delay in Substantial Completion of the Work, or Final Completion of the Work, which the parties agree represents a reasonable estimate of the damages to be incurred by the District in the event of delay.

The District may deduct the amount of liquidated damages from any monies due or that may become due to the Contractor or if such monies are insufficient, the Contractor and/or its surety shall pay to the District any deficiency.

Section 39.2. **Non-Exclusive Remedy.** The remedies provided herein are not exclusive, and are in addition to other rights and remedies provided by law or under this Contract.

ARTICLE 40 DELAYS; SUSPENSION OF WORK; EXTENSION OF TIME

Section 40.1. **Extension of Time is Exclusive Remedy; No Damage for Delay.** If the Contractor's performance of Work on the critical path of the current Project Schedule is delayed without fault on the Contractor's part, because of any event which is beyond the control of the Contractor such as area-wide labor disputes, extraordinarily severe weather, acts of God or other force majeure, and the Contractor would have otherwise been able to perform all of its obligations under the Contract but for such delay, the Contractor may be entitled to a day-for-day extension of time in accordance with, and subject to the limitations of this **Article 40**.

Extension of time pursuant to the provisions and limitations of **Article 40** shall be Contractor's sole and exclusive remedy for delay regardless of the cause or extent of any such delay and Contractor shall not be entitled to increased compensation as a result of any such delay.

Contractor shall notify the District in writing within three (3) days after the claim arises of any claim for suspension, delay, impact or interruption.

Section 40.2.

Owner Directed Suspensions. The District may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work and to remove material and equipment from the Work Site for such period of time as the District may determine to be appropriate for the convenience of the District.

If the performance of all or part of the Work on the critical path of the Project Schedule is suspended, delayed or interrupted by the District pursuant to such a written order which shall be a condition precedent under this **Section 40.2**, which suspension, delay or interruption precludes the performance of any Work at the Project by Contractor, day-for-day extension of Contract Time may be granted in accordance with this **Article 40**.

The Contractor shall insert in each subcontract a provision that the Subcontractor shall comply immediately with a written order of the District to the Contractor to suspend the Work, and that each such Subcontractor shall further insert the same provision in each subcontract at any tier.

Section 40.3.

Causes Giving Rise to Extension. The Contractor will be granted an extension of time for the delay in completion of any Work, performed under the critical path of the Project Schedule, arising from area-wide labor disputes, acts of God, acts of the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, weather which is extraordinarily severe (determined on a monthly basis), or acts of owners or occupants of property adjoining the Work Site, or other force majeure, provided that the aforesaid causes were not foreseeable and did not result from the fault or negligence of the Contractor, and provided further that the Contractor has taken reasonable precautions to prevent further delays owing to such causes, and has notified the District in writing of the cause or causes of delay within ten (10) days from the beginning of any such delay. Within thirty (30) days after such delay the Contractor shall furnish the District with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract Document references, and the measures taken to prevent or minimize the delay. Failure to submit such information will be sufficient cause for denying the request for an extension of time. All time extensions must be approved by the District prior to the Project Schedule being extended.

Section 40.4.

Shortage. An extension of time will not be granted for a delay caused by a shortage of materials, except District-furnished materials, unless the Contractor furnishes to the District documented proof that he has made every effort to obtain such materials from every known source within reasonable reach of the Work. The Contractor shall also submit proof, in the form of network analysis data, that the inability to obtain such materials as originally planned did in fact cause a delay in final

completion of the Work which could not be compensated for by revising the sequence of his operations. Only the physical shortage of material, and not its costliness, will be considered under these provisions as a cause for extension of time, unless the District allows otherwise in its sole discretion.

Section 40.5. **Actual Delays Only.** Only the actual delay necessarily resulting from the causes specified in this **Article 40** shall be grounds for extension of time. In case the Contractor is delayed at any time or for any period by two (2) or more of the causes specified in this Article, the Contractor shall not be entitled to a separate extension for each one (1) of the causes but only one (1) period of extension will be granted for the delay.

Section 40.6. **Delay for Affected Work Only.** In case the Contractor is actually and necessarily delayed in the performance of the Work from one or more of the causes specified in this **Article**, the extension of time to be granted to the Contractor shall be only for the portion of the Work on the critical path of the Project Schedule so delayed. The Contractor shall not be entitled by reason of such delay to an extension of time for the completion of other portions of the Work. If the Contractor shall be so delayed as to a portion of the Work it shall nevertheless proceed continuously and diligently with the prosecution of the remainder of the Work. No demand by the Contractor that the District determine and certify any matter of extension of time for the completion of the Work or any part thereof which has been delayed will be of any effect whatsoever unless the demand is made in writing within at least ten (10) days of the commencement of the delay. The District's determination as to any matter of extension of time for completion of the Work or any part thereof shall be binding and conclusive upon the Contractor.

Section 40.7. **No Extensions if Contractor-Induced; No Extensions if other Remedies Provided or Excluded.** Extension of time will be granted only for unforeseen delays on the critical path of the Project Schedule caused solely and exclusively by causes beyond the Contractor's control and not identified at the commencement of the Work; provided that no extension of time will be granted for any delay: (1) to the extent that Contractor's performance would have been so delayed by any Contractor-induced causes, including but not limited to the fault or negligence of the Contractor or its Subcontractors; or (2) for which any remedies are provided for or excluded by any other provision of the Contract.

Section 40.8. **Concurrent Delay.** Delays or suspensions caused by Owner, its agents, or separate contractors, even if such delays or suspensions are the result of a breach of the Contract or a willful interference by Owner with Contractor's performance of the Work, shall not be grounds for an extension of time or claim for damages or an increase in the Contract Sum if, and to the extent, such delays or suspensions are concurrent with other

causes of delay or suspension for which District, its agents or separate contractors are not primarily responsible.

Section 40.9. **Optional Termination by District.** If the District determines that as a result of delay caused by labor dispute, act of God or other force majeure, the Contractor's Work could be performed by another person without such delay, the District may at its option terminate the Contract in whole or in part as provided in Article 51, TERMINATION FOR CONVENIENCE OF THE DISTRICT, or in Articles 52, TERMINATION FOR FAILURE TO PROCEED or Article 53, TERMINATION FOR OTHER DEFAULT, as appropriate, or cause such delayed Work to be performed by others with a decrease in the Contract Sum. The Contractor shall keep the District informed of the progress of its Work and promptly advise the District of any circumstances that might cause a delay of its Work or interfere with its adherence to the Project Schedule.

Section 40.10. **Change Order Issued.** A Change Order will be issued to the Contractor within a reasonable period of time after approval of a request for extension of time, specifying the number of days allowed, if any, and the new date for completion of the Work or specified portions of the Work.

Section 40.11. **No Release.** An extension of time granted shall not release the Contractor's surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract and said Contract shall be and shall remain in full force and effect during the continuance and until Final Completion and Final Acceptance of the Work covered by the Contract unless formally suspended or annulled in accordance with the terms of the Contract.

Section 40.12. **No Waiver.** Neither the grant of an extension of time beyond the date fixed for the completion of any portion of the Work, nor the performance and acceptance of any part of the Work or materials specified by the Contract after the time specified for the completion of the Work, shall be deemed to be a waiver by the District of the District's other rights and remedies provided under the Contract.

ARTICLE 41 CONTRACT SUM; SCHEDULE OF VALUES

Section 41.1. **Full Compensation.** Payment for the various items listed in the Schedule of Values shall constitute full compensation to complete the Work in conformity with the Contract. All costs for Work shown or indicated by the Contract, even if not specifically provided for by an item in the Schedule of Values, shall be included. If the District disputes the Schedule of Values, the District shall have the right to conduct an audit of the computation of the Schedule of Values. The Contractor will not be entitled to additional compensation for providing any activity or material

necessary for the completion of the Work in accordance with the Contract even if the activity or material is not included or indicated in the Contract.

Section 41.2. **Payments Include Repair and Restoration.** Payments for the various items listed in the Schedule of Values will constitute full compensation for restoring loss and repairing damage arising from the nature of the Work, from the action of the elements, from any unforeseen difficulties which may be encountered during the prosecution of the Work or from risks of every description, except as otherwise expressly provided in the Conditions.

Section 41.3. **Payments Include Discontinuance Expenses.** Payments for the various items listed in the Schedule of Values will constitute full compensation for all expense incurred in consequence of discontinuance of all or any portion of the Work except as provided in **Article 40, DELAYS; SUSPENSION OF THE WORK; EXTENSION OF TIME, and Article 51, TERMINATION FOR CONVENIENCE OF THE DISTRICT.**

ARTICLE 42 PROGRESS PAYMENTS

Section 42.1. **Monthly Payments; Schedule of Values.** As the Work proceeds, the District will make progress payments monthly, pursuant to Applications for Payment submitted by the Contractor and approved by the Architect of Record, the Managing Architect and the District before payment is made. Each Application for Payment shall include the following information:

- 42.1.1. Date
- 42.1.2. Contractor's Name
- 42.1.3. Contractor's Identification Number
- 42.1.4. Contract Number
- 42.1.5. Contact Person/Telephone Number
- 42.1.6. Application for Payment Amount
- 42.1.7. Cumulative Prior Payments
- 42.1.8. Percentage Complete as of Date of Application for Payment
- 42.1.9. Participating Subcontractors and Suppliers

To provide a basis for determining the amount of progress payments, the Contractor shall furnish a Schedule of Values, in such detail as the District shall request, showing the amount included therein for each principal

category of the Work, and showing the estimated quantities, man-hours (which are for schedule update purposes) and unit prices applicable under the Contract. A pay item for cleaning shall be included in a lump sum amount. The Schedule of Values must be submitted and must be approved by the District prior to the first Application for Payment. Each item of the Schedule of Values shall include its proportionate share of overhead, profit, and all other expenses involved. The quantities and unit prices shall be extended to show the total amount for each item of Work and the sum of these amounts shall total the Contract Sum. The unit prices shall be in proper balance and shall be subject to approval by the District. The Schedule of Values shall be used to review the Contractor's monthly Application for Payment only and shall not be used to determine change order amounts. In the preparation of Applications for Payment, the District, at its sole discretion and in writing, may authorize preparatory work done and to be taken into consideration.

Section 42.2. **Retainages.** From each progress payment, 10% will be deducted and retained by the District, and the remainder will be paid to the Contractor as provided in this **Article 42**. After 50% of the Contractor's Work at the Work Site is completed and if quality and rate of progress on the Contractor's Work as a whole is satisfactory, deductions will be made on the remaining progress payments at the rate of 0%; provided, however, that if progress on the Work subsequently becomes, in the opinion of the Architect of Record or the District, unsatisfactory, or if the Contractor installs defective or non-conforming Work or if any of the reasons set forth in **Section 42.8** for withholding payments becomes applicable, deductions will be reinstated and made in such amounts as to cause the total amount retained from all progress payments over the term of the Contract to equal 10% of the Contract Sum plus any other amounts appropriately withheld by the District pursuant to the provisions as set forth in **Section 42.8**.

Section 42.3. **Passage of Title.** Material and work covered by progress payments shall become the sole property of the District, no matter where located. This provision shall not be construed as relieving the Contractor from the responsibility for materials and Work upon which payments have been made, the restoration of damaged Work or as waiving the right of the District to require the fulfillment of the terms of the Contract.

Section 42.4. **Timing.** Progress payments will be made within thirty (30) days after the receipt by the District of Architect of Record's approval of an Application for Payment.

Section 42.5. **No Payment for Non-Conforming Work.** No progress payments will be made for Work not in accordance with the Contract Documents.

Section 42.6.

Preliminary Applications For Payment; Pay Request Meeting; Applications For Payment. Preliminary Applications for Payment shall be submitted on or about the twenty-fifth (25th) day of each month on the forms supplied by the District and shall be completely filled in and signed. Five (5) copies of the application shall be submitted. The applications shall be for Work projected to the twenty-fifth (25th) day of the month and shall be supported by evidence which is required by this Article and the form of Application for Payment and such other documentation as the District may require. The Contractor shall certify that the work for which payment is requested has been done and that the materials listed are stored where indicated.

Between the 25th and the last day of each month, the Contractor shall attend the Monthly Pay Request Meeting which shall be attended by the Contractor, the Architect of Record, Consultants, and the District to review the preliminary Request for Payment previously submitted. Immediately following the Monthly Pay Request Meeting the Contractor shall revise the previously submitted preliminary Application for Payment, if necessary, in accordance with the directives of the District, and submit nine (9) copies of the final Application for Payment to the District on or before the first day of the following month. Each copy of each application shall be originally signed and notarized.

Those items on the Application for Payment that compensate for Work done pursuant to a Change Order on a cost reimbursable basis under **Article 47, CHANGES**, will, under the procedures of the District, be subject to the District audit and review of the Contractor's records supporting the payment applications. Audits will be performed so as not to interfere with timely processing of Applications for Payment. If the audit indicates that the Contractor has been overpaid under a previous Application for Payment, that overpayment will be credited against current Applications for Payment. For a period of three (3) years after Final Acceptance of the Contract, the Contractor shall maintain and make available for audit, inspection and copying by the District and the County and their respective authorized representatives, all records subject to audit review.

Section 42.7.

Deductions from Progress Payments. In addition to the deductions for retainage provided for under **Section 42.2** hereof, the District shall deduct from each progress payment the following:

- 42.7.1. Any liquidated or actual damages which have accrued as of the date of the Application for Payment.
- 42.7.2. Any sums expended by the District in performing any of the Contractor's obligations under the Contract which the Contractor has failed to perform.

42.7.3. Any other sums which the District is entitled to recover from the Contractor under the terms of the Contract.

The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to deduct or otherwise receive such sums at a later time.

Section 42.8.

The District's Right to Withhold Payments. The District may withhold payment for any Work claimed to have been performed by the Contractor if the Application for Payment issued pursuant to Section 42.7 states, or the District reasonably determines that:

42.8.1. Such Work is defective or non-conforming and such defects or non-conformance have not been remedied; or

42.8.2. The Contractor's progress of the Work falls behind the critical path of the Project Schedule by more than 14 days or the Contractor fails to achieve a Project Schedule milestone; or

42.8.3. The Contractor has not promptly paid all amounts due to laborers, materialmen and Subcontractors in which case the District shall have the right but not the obligation to pay such laborers, materialmen and subcontractors. Such action on the part of the District shall not be interpreted as creating any third party beneficiary rights; or

42.8.4. Any of the Contractor's laborers, Subcontractors or materialmen has filed a mechanic's lien against the Project, and the Contractor has not caused such lien to be discharged; provided that the amount withheld shall not exceed two times the amount of such liens plus any reasonable expenses including attorneys' fees which may be incurred in dealing with such liens; or

42.8.5. The District reasonably determines that the Contractor will be unable to complete the Work for the balance of the Contract Sum and the Contractor fails to provide reasonable assurances (as determined by the District) that it has the financial resources to complete the Work; or

42.8.6. The Contractor is otherwise in default under its Contract with the District; or

42.8.7. The Contractor has not maintained the conformed As-Built Drawings in an accurate and complete condition as required herein; or

- 42.8.8. If necessary approvals as required by the Contract have not been obtained; or
- 42.8.9. Contractor has not provided Daily Reports as required; or
- 42.8.10. The Contractor has not provided updates to the Progress Schedule in accordance with the terms and conditions of **Article 37** hereof.

The District shall have the right to withhold from payment the funds necessary to offset those items enumerated above and to pay such funds directly to those parties for the account of the Contractor. The District shall render to the Contractor a proper accounting of all such disbursements, and the value of such disbursed funds shall be entered as payment under the Contract as if made to the Contractor. The provisions of this **Section** shall not require the District to determine or adjust any claims or disputes between those parties furnishing labor, materials or equipment hereunder, or to withhold any money for their protection; nor shall the District be liable to any party for its failure to do so. No payment made by the District to the Contractor, nor any acceptance, use or occupancy of the Work or any portion thereof by the District or any other person, shall constitute acceptance of any defective Work or Work not in compliance with the Contract Documents.

Section 42.9. **Payment for Materials Generally.** Payment for materials which have been or will be incorporated into the Work, shall be made on a monthly basis as set forth herein; provided, however that materials which have not yet been incorporated into the Work are also subject to the provisions of **Section 42.11**.

Section 42.10. **Payment for Unincorporated Material.** The District, at its discretion, may authorize payment for material delivered to the Contractor and not yet incorporated in the Work, whether or not delivered to the Work Site, as follows:

- 42.10.1. Subject to the prior written approval of the District: (a) such material which is delivered and properly stored at the Work Site; and (b) such specially fabricated material as is delivered to the Contractor and properly stored by it in bonded storage.

Prior to inclusion of such materials in any Application for Payment, the Contractor shall submit certified invoices for such materials to the District. The District may allow only such portion of the amount represented by these invoices, as in its opinion, is consistent with the reasonable cost of such materials. If such materials are stored outside Allegheny County, the Contractor shall accept responsibility for and pay all personal and property taxes that may be levied against the District by any state or subdivision

thereof on account of such storage of such material. The District will permit the Contractor, at its own expense, to in good faith contest the validity of any such tax levied against the District in appropriate proceedings and in the event of any judgment or decree of a court, the Contractor agrees to pay same together with any penalty or other costs relating thereto.

42.10.2. All such materials so accepted shall be and become the property of the District. The Contractor at its own expense shall promptly execute, acknowledge and deliver to the District proper bills of sale or other instruments in writing, in a form and as required by the District, conveying and assuring to the District, title to such material and a perfected security interest in same, included in any partial estimate, free and clear of debts, claims, liens, mortgages, taxes and encumbrances. The Contractor at its own expense shall conspicuously mark such materials as the property of the District, shall not permit such materials to become commingled with non-District-owned property and shall take such other steps, if any, as the District may require or regard as necessary to vest title in the District to such material free and clear of debts, claims, liens, mortgages, taxes and encumbrances.

42.10.3. Material included in a partial estimate which material may subsequently become lost, damaged or unsatisfactory shall be deducted from succeeding partial estimates.

42.10.4. Notwithstanding the passage of title as aforesaid, the Contractor shall continue to be liable and responsible to the District for any damage to or loss of such material until such material is actually delivered to the Work Site and incorporated in the Work. Contractor shall provide to the District a certificate of insurance, satisfactory to the District, evidencing satisfactory insurance coverage for the obligations hereunder.

42.10.5. Pre-engineering, testing and shop drawings are not considered materials or equipment incorporated into the Work and the costs for such shall be prorated over the appropriate duration of the Project.

Section 42.11.

Property Rights in Materials. The Contractor shall have no property right in materials after they have been attached or affixed to the Work, or after payment has been made by the District to the Supplier for materials delivered to the Work Site, or stored subject to or under the control of the District, as provided in this Article.

Section 42.12. **Flow Through to Subcontractors.** The Contractor shall cause language to be inserted in each of its subcontracts granting rights, to the District to audit and review the Subcontractors' records in support of a request for payment on a cost-plus and/or cost-reimbursable basis. Such rights shall not be less than the rights the District has to audit and review the Contractor's books and records.

ARTICLE 43
SUBSTANTIAL COMPLETION; FINAL COMPLETION; FINAL PAYMENT

Section 43.1. **Substantial Completion.** The Contractor shall notify the District in writing when, in the opinion of the Contractor, its Work has reached Substantial Completion. Such notice shall include:

- 43.1.1. A statement that the Work is Substantially Complete.
- 43.1.2. The Contractor's punch list of incomplete or unsatisfactory items, with reasons therefor and with dates for the anticipated completion thereof, correction or replacement of such incomplete or unsatisfactory items. Such list to be in a form satisfactory to the District.
- 43.1.3. Supporting documentation for completion as required by the Contract Documents.
- 43.1.4. Statement of pending insurance changeover requirements, if any.
- 43.1.5. Specific warranties, workmanship/maintenance bonds, maintenance agreements, final certifications and similar documents, except those which require a date of Substantial Completion.

Prior to inspection establishing Substantial Completion, at the direction of the District, the Contractor shall discontinue use of and remove from the Work Site all temporary facilities and services, construction tools and facilities, mock-ups and similar elements.

After the District's receipt of notice of Substantial Completion from the Contractor, the Architect of Record, in conjunction with the District, shall conduct inspection of the progress of the Work to determine the date of Substantial Completion of the Work and shall certify same to the District in a Certificate of Substantial Completion which shall contain a Punch List of incomplete or unsatisfactory items and a schedule for the completion prior to Final Completion. The Architect of Record will distribute a copy of said Certificate to the Contractor.

In the event that the Contractor's Work is determined by the Architect of Record as not substantially complete, the Architect of Record will advise the Contractor of work which must be performed before the Certificate will be issued. Contractor shall remain responsible for its Work until both the District and Architect of Record agree that the Project has reached Substantial Completion. The Architect of Record, in conjunction with the District, will perform a re-inspection when requested by the Contractor and when assured that the Work has been Substantially Completed. Where such re-inspection to establish Substantial Completion is performed, the Contractor shall be responsible for all costs associated with such re-inspection including compensation of the District, the Architect of Record, and their respective agents, servants, consultants and employees for the performance of these additional services. The Contractor shall complete all Punch List items before notifying the District that its Work has reached Final Completion.

Section 43.2.

Final Completion. The Contractor shall complete the following as soon as possible, but in no event later than the time set forth in the Contract Documents, and before requesting inspection for certification of Final Completion and final payment:

- 43.2.1. Submit release of liens and encumbrances or alternative evidences, as required by the Conditions.
- 43.2.2. Submit certificates of insurance for products and completed operations, as may be required by the District.
- 43.2.3. Submit final statement of accounting, as specified in this Section.
- 43.2.4. Submit a certified copy of the Architect of Record's Punch List which accompanied the Certificate of Substantial Completion, stating that each item required to be completed or corrected by the Contractor has been completed or otherwise resolved for acceptance and has been endorsed and dated by the Architect of Record.
- 43.2.5. Submit consent of surety.
- 43.2.6. Submit all As-Built Drawings.
- 43.2.7. Submit any other documents and complete any deliveries and other work required for Substantial Completion but accepted as exceptions to requirements for Substantial Completion.

After the Contractor has notified the District in writing that the Work has reached Final Completion, the Architect of Record, accompanied by the District, will make the final inspection for the purpose of ascertaining that

the Work has reached Final Completion, including Punch List items, in accordance with all of the requirements of the Contract Documents. Upon completion of inspection, the Architect of Record will either prepare a certificate of Final Completion or will advise the Contractor of work that is incomplete or of obligations that have not been fulfilled, but are required for final acceptance. If necessary, the inspection procedure will be repeated. If the Architect of Record and the District are to perform reinspections due to failure of the Work to comply with the claims of status of completion made by the Contractor, then the District will compensate the Architect of Record for such additional services and will deduct the amount of such compensation from the final payment to that Contractor.

Section 43.3. **Final Closeout.** Upon completion of the Contractor's Work, as evidenced by inspection of facilities and receipt of all required closeout documents in acceptable form, a final Certificate for Payment will be issued and final payment made, in accordance with the Conditions.

Section 43.4. **Acceptance of the Work.** When the Architect of Record has made the final inspection and has determined that the Contractor's Work has reached Final Completion in accordance with the Contract Documents, including all required certifications, warranties and submittals, the District will accept the Work. Immediately upon such acceptance, the Contractor will be relieved of the duty of maintaining and protecting the Work as a whole; provided, however, that the Contractor will not be so relieved unless it has cleared the Work Site of all of its personnel and equipment.

Section 43.5. **Further Actions.** Final Acceptance shall be final and conclusive, and no further performance of Work shall be required except as regards latent defects, fraud (including but not limited to defects and deficiencies which the Contractor or any of its employees, agents or Subcontractors or material Suppliers had reason to know of and which were not disclosed to the District or the Architect of Record in writing), subject to the provisions of **Article 33, COORDINATION AND ACCESS**, or such gross mistakes as may amount to fraud, or as regards the District's rights under any warranty or guarantee.

Section 43.6. **Partial Occupancy.** If the District finds it necessary or desirable to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, the Contractor shall provide such portion or portions to the District promptly upon receipt of direction from the District to do so. Such occupancy or use shall not modify or relieve the Contractor from any of its obligations under the Contract Documents, including, but not limited to the Contractor's obligation to complete any items contained in the Punch List in order to achieve Substantial Completion or to warrant such Work from the date of Final Completion of the Project, provided,

however, that the Contractor shall not be responsible for any damage to the Work resulting from the District's occupancy or use thereof.

Section 43.7.

Final Payment Upon Final Application for Payment. After all Punch List items have been satisfactorily completed and after the Work has been accepted by the District, subject to the provisions of Article 23, WARRANTY OF WORK and this Article 43, a final payment will be made as follows:

- 43.7.1. Prior to Final Acceptance of the Work, the Contractor shall prepare and submit a proposed Final Application for Payment to the District showing the proposed total amount due the Contractor, segregated as to Contract item quantities, force account work, and other bases for payments; deductions made or to be made for prior payment; amounts to be retained; any claims the Contractor intends to file at that time or a statement that no claims will be filed; and any unsettled claims, stating amounts. Prior applications and payments shall be subject to correction in the proposed Final Application for Payment. Claims filed with the Final Application for Payment must be otherwise timely under these Conditions. The quantities listed on the Schedule of Values will not necessarily govern final payment. When applicable, payments to the Contractor will be made only for the actual quantities of the Contract items constructed in accordance with the Contract Documents.
- 43.7.2. The Architect of Record, the Managing Architect and the District will review the Contractor's proposed Final Application for Payment and necessary changes or corrections will be forwarded to the Contractor. Within ten (10) days thereafter, the Contractor shall submit a Final Application for Payment incorporating changes or corrections made by the District, the Managing Architect or the Architect of Record together with additional claims resulting therefrom, if any. Upon approval of the final Application for Payment by the Architect of Record, the Managing Architect and the District, the amount recommended for payment in the Final Certificate for Payment will become payable as set forth below.
- 43.7.3. If the Contractor files no claims with the Final Application for Payment and no claims remain unsettled after thirty (30) days from Final Acceptance of the Work by the District, and agreements are reached on all questions regarding the Final Application for Payment, the District, in exchange for an executed release, satisfactory in form and substance to the District, and a consent duly executed by the Contractor's surety therefor, will pay the entire sum found due on the approved

Final Application for Payment, including the amount, if any, allowed on claims.

- 43.7.4. The release delivered by the Contractor shall be from any and all claims arising out of or relating to the Work under and in connection with the Contract and shall release and waive any claims against the District, the Architect of Record, and their respective agents, officers, members, employees and consultants. The release shall be accompanied by a certification by the Contractor: (1) that it has resolved any claims made by Subcontractors, Suppliers and others against the Contractor or the Project; (2) that it has no reason to believe that any party has a valid claim against the Contractor or the Project which has not been communicated in writing by the Contractor to the District as of the date of the certificate; and (3) that all warranties and guarantees are in full force and effect and inure to the benefit of the District. The release and the certificate shall survive Final Acceptance and final payment.
- 43.7.5. Final Payment, including payment of retainage, will be made within thirty (30) days after approval of the final notice and resolution of the Contractor's claims, or thirty (30) days after Final Acceptance of the Work by the District, whichever is later. If a Final Application for Payment has not been approved within sixty (60) days after Final Acceptance of the Work, the District may elect to make payment of sums not in dispute without prejudice to the rights of either the District or the Contractor in connection with any disputed items.

Section 43.8. **Withholding Payment for Damages.** When the Contractor has exceeded the Contract Time and has not yet received an extension of time to complete the Contract so that damages may be assessed, the District may withhold an additional amount of money to cover the amount of damages that may accrue based on the Contractor's projected Substantial Completion as estimated by the District based on the last Progress Schedule. The failure to retain such amount shall not constitute a waiver of the District's right to deduct or otherwise receive such amount or sums at a later time from such Contractor or its surety.

Section 43.9. **Corrections of Amount Not Precluded.** The District shall not, nor shall any director, officer, employee or consultant thereof, be precluded or estopped, by any approval or recommendation of a Final Application for Payment by the Architect of Record or any director, officer, agent, employee or Consultant of the District under any provisions of the Contract, from showing at any time (either before or after the Final Completion and Final Acceptance of the Work and payment therefor) the true and correct amount and character of the Work done or materials

furnished by the Contractor or any person under the Contract or from showing at any time that any such Final Application for Payment is untrue and incorrect, or improperly made in any particular, or that the Work and materials, or any part or portion thereof, do not in fact conform to the Contract Documents. The District shall not be precluded or estopped, notwithstanding any recommendation or approval of any such Final Application for Payment and payment in accordance therewith, from demanding and recovering from the Contractor or its surety such damages as it may sustain by reason of its failure to comply with the Contract Documents.

**ARTICLE 44
PAYMENT TO SUBCONTRACTORS**

Section 44.1. **Payment in Accordance with Subcontracts.** The Contractor shall pay all Subcontractors for and on account of Work performed by such Subcontractors in accordance with the terms of their respective subcontracts, but not later than five (5) days after receipt of payment from the District. In the event the Contractor fails to pay its Subcontractors, the Owner may, at its sole discretion, pay for the Work performed by said Subcontractors and withhold payment from the Contractor pursuant to the provisions set forth in **Section 42.8**. It is understood that the District, through such actions, is not creating any third party beneficiary rights hereunder.

**ARTICLE 45
PREVAILING MINIMUM WAGE PREDETERMINATION; LABOR RELATIONS**

Section 45.1. **Applicable Law.** [insert provision]

Section 45.2. **Wage Predetermination.**[insert provision]

**ARTICLE 46
PAYMENT OF TAXES**

Section 46.1. **No Additional Payments for Taxes.** Except as otherwise provided herein, the Contractor shall pay all taxes which are legally enacted when the bids are received, whether or not yet effective or merely scheduled to go into effect.

**ARTICLE 47
CHANGES**

Section 47.1. **Changes.** The District may, from time to time and without notice or consent of the Contractor or the Contractor's surety, change the Work by a written Change Order to the Contractor specifying the change. Any change in the Contract Sum or Contract Time for performance resulting from a Change Order shall be determined as provided in this Article 47.

The request by the District for the Contractor to supply a cost proposal shall not be considered a Change Order.

Section 47.2. **Specified Variations.** An instruction by the District to perform Work will not constitute a Request for Proposal or Change Order if payment for the Work is to be made on a unit price basis. Similarly, an instruction by the District to perform alternative or optional Work specified in the Contract Documents is not a Request for Proposal or a Change Order. Additional payments or credits or changes in the Contract Time for performance resulting from the performance of alternative or optional Work shall be made or allowed only as provided in the Contract.

Section 47.3. **Compliance with the District's Instructions.** Upon the receipt of written instructions from the District pursuant to this Article, or in the case of emergencies endangering life and/or property, in which case the Contractor shall proceed in accordance with OSHA Regulations, the Contractor shall proceed to perform the Work in accordance with the Contract Documents, even if the amount of additional payment or credit or adjustment in the Contract Sum or the extent of any change in the Contract Time for performance, if any, resulting from such Work has not yet been determined and even if there is a disagreement between the District and the Contractor as to whether the Contractor is entitled to additional payment or an extension of time for performing such Work.

Nothing in this **Section 47.3** will be construed to bind the District for acts of its employees and agents, including the District, exceeding the delegation of District under **Article 3, DELEGATION OF DISTRICT**. The Contractor shall notify the District in accordance with **Section 47.11** when it receives direction, instruction or interpretation or determination from any source which may cause any change in the Work, Contract Sum or Contract Time. Such written notification shall be given to the District before the Contractor acts on said direction, instruction, interpretation or determination.

Except as herein expressly provided, no order, statement, or conduct of the District, or any other person shall be treated as a change under the Contract or entitle the Contractor to an adjustment under the Contract.

Section 47.4. **Change Initiated by Contractor.** When a change in the Contract Sum or an adjustment in Contract Time is requested by the Contractor, Contractor shall submit its Change Order Request to the District as provided in **Section 47.6 and 47.11**.

If the District, in consultation with the Architect of Record, disputes the Contractor's entitlement to the requested change in the Contract Sum or adjustment in the Contract Time, the Contractor agrees to proceed in accordance with the provisions of Section 47.7. (Disputed Change Order).

If the District, in consultation with Architect of Record, agrees that the Contractor is entitled to a change in the Contract Sum or an adjustment in Contract Time, but disputes the amount of the requested change or adjustment, the Contractor agrees to proceed in accordance with the provisions of Section 47.8. (Unilateral Change Order).

If the District, in consultation with the Architect of Record, approves in writing, any Contractor's Change Order Request, or any negotiated variation thereof, a Change Order shall be prepared by the District and executed by the District and Contractor.

Section 47.5.

Change Initiated by Architect of Record or by the District. When a change in Work is proposed by the Architect of Record or any Architect of Record's Consultant, such change shall first be submitted to the District in writing for review. Changes in Work may also be proposed by the District. Upon the request of the District, the Architect of Record and the appropriate Architect of Record's Consultant(s) shall review any such proposed change and the Architect of Record shall prepare a Request for Proposal (RFP) clearly documenting the scope and nature of the change. The RFP shall be forwarded to the District for review.

After the District has approved any such RFP, it shall be forwarded to the Contractor shall forward it to the Contractor for determination of the cost and/or schedule change associated with the RFP. Contractor shall submit its response to the RFP in accordance with the provision of **Section 47.6 and 47.11** hereof.

If the District, in consultation with the Architect of Record, disputes the amount of the requested change in Contract Time or adjustment in Contract Sum, the parties agree to proceed in accordance with the provisions of **Section 47.8** (Unilateral Change Order).

If the District, in consultation with the Architect of Record, approves in writing, any Contractor's Change Order Request, or any negotiated variation thereof, a Change Order shall be prepared by the District and executed by the District and Contractor.

Section 47.6.

Pricing Change Order/Requests and Payment of Approved Change Orders. The Contractor and the District agree that the Contractor's response to Requests for Proposals may be priced and paid on any of the following three (3) bases, subject to the approval of the District:

47.6.1. on the basis of an agreed lump sum; properly itemized and supported by sufficient substantiating data to permit evaluation which shall include a breakdown of each item into labor (based on the current prevailing wage scale for each craft or type of

worker), material and equipment and the percentage fees set forth below; or

- 47.6.2. on the basis of agreed to unit prices by the District and the Contractor; or
- 47.6.3. on the basis of allowable time and material cost actually and properly incurred, subject to an agreed maximum not-to-exceed cost, in accordance with **Section 48.10** hereof, and the percentage fee set forth below.

Special Instructions for all Change Orders are as follows:

- (a) Adding and Deleting on same Change Order:
 - (i) When Work is added and deleted on the same Change Order, resulting in net additional cost, the Contractor shall first prepare a bill of material and labor breakdown showing separate net costs of the work added and deleted. It shall then subtract the net cost of the deleted work from the net cost of the added work and escalate the difference by adding the allowed percentage.
 - (ii) When similar materials are to be added and deleted on the same Change Order, the difference in material quantities shall be determined before pricing and escalation. Labor costs in the same trade shall be handled in the same manner, the difference in labor hours shall be determined before pricing and escalation.
 - (iii) When work is added and deleted on the same Change Order, resulting in net credit, the Contractor shall first determine the net cost of the deleted material, labor, and equipment comprising the credit. It shall next determine the total cost of the added material, labor, and equipment rental, including escalation. The total cost of the added work shall then be subtracted from the net cost of the deleted work and the resulting difference shall become the amount of the credit change order.
- (b) Deductive Change Order: For purely deductive change orders, the amount of the change order shall be equal to the direct cost of the deleted material, labor and equipment comprising the credit. No deduction will be made for overhead and profit on purely deductive Change Orders.

(c) Fees: The following fees shall be calculated as a percentage of the total cost of the Change Order and shall apply in calculating price for all Change Orders determined on the basis of a lump sum price, or on the basis of allowable time and material cost actually and properly incurred pursuant to **Section 48.7**.

	<u>% Markup for Overhead & Profit</u>
(i) For the fee of the Contractor or Subcontractor that will actually perform the work, as its overhead and profit.	10%
(ii) For the Contractor's fee for work performed by upper tier Subcontractors as the Contractor's overhead and profit.	5% of upper tier Subcontractor's price
(iii) For the upper tier Subcontractor's fee for work performed by lower tier Subcontractors as the upper tier Subcontractor's overhead and profit.	5% of the lower tier Subcontractor's price
(iv) The Contractor's fee percentages shall be considered to include, among other costs, Contractor-provided insurance, per Article 8; estimating, clerical and drafting costs, performed either in the field or in the home office, relating to the extra work; field supervision not applied solely to the extra work; use of small tools; incidental job burdens; applicable taxes for the Contractor and all Subcontractors of any tier; bond costs for Subcontractors at any tier; and general home office expenses and all other overhead costs including that required for Change Orders requiring an extension of time.	

(d) Labor Rates: Prior to the submission of the first Application for Payment, the Contractor shall submit to the District for its approval the hourly labor rate per trade classification proposed to be used by the Contractor in the preparation of cost proposals. The proposed hourly labor

rate shall be substantiated with backup information showing the complete make-up of the rate. Upon approval of the proposed hourly rate by the District, the Contractor may submit cost proposals accordingly.

- (e) Cost of Contractor's bond premiums. Subcontractor bond premiums, if any, are included in overhead and are not separately compensated.

After Contractor and District have agreed as to the pricing of a Change Order, and a Change Order has been issued by the District which has been executed by the Contractor, Contractor shall be paid on account of such Change Order work as provided in the Contract Documents. The District and the Contractor acknowledge and agree that Change Orders include payment for all costs associated with the change both with respect to changed work and unchanged work, whether direct, indirect, impact or consequential in nature and any and all claims which Contractor may have relating to the change, including but not limited to, delay, acceleration, interference, hindrance and/or impact claims.

Section 47.7.

Disputed Change Order. Prior to the Contractor's submittal of a Change Order Request in proper form and substance, or after the Contractor's submittal of a Change Order Request proper in form and substance, in the event that the District and the Contractor are unable to agree that a change has occurred which should result in a change in the Contract Sum or adjustment in the Contract Time, the District may issue a Disputed Change Order ordering the Contractor to proceed with the performance of the work in question and the Contractor shall expeditiously proceed with the Work involved, and shall maintain records from which to determine whether any additional costs are incurred.

The parties hereby specifically agree that until such time as the Contractor submits a Change Order Request in proper form and substance, or until the dispute as to the entitlement to a change in Contract Sum or adjustment in Contract Time is resolved between the Contractor and District by agreement or otherwise the District will not be obligated to pay the Contractor on account of such Work, or extend the Contract Time.

Section 47.8.

Unilateral Change Order. In the event that the District and the Contractor are agreed that Contractor is entitled to a change but are unable to agree on the pricing of any change in the Contract Sum or adjustment in the Contract Time, the District may issue a Unilateral Change Order ordering the Contractor to proceed with the performance of the Work in question and the Contractor shall expeditiously proceed with the Work involved.

The parties hereby specifically agree that until such time as the dispute as to the pricing of any such Unilateral Change Order is resolved between the Contractor and the District by agreement or otherwise, the District will pay to the Contractor on account of such Work, 75% of the costs actually and reasonably incurred pursuant to the provision of **Section 47.10** but in any event, no greater than the amount which the District and its Consultants have determined the change to be worth. In no event shall the issuance of a Unilateral Change Order pursuant to this sub-article be construed as the District's agreement to reimburse the Contractor for the change on a time and material basis. When the dispute as to the pricing of a change is resolved by agreement or otherwise, an accounting will be made of the total payments made on account of such change and an adjustment made accordingly.

Section 47.9. **Duty to Proceed.** In the event that the District issues a Disputed Change Order or a Unilateral Change Order pursuant to this Article, the Contractor agrees that it shall diligently perform the Work in accordance with such Disputed Change Order or Unilateral Change Order. Failure of the Contractor to proceed with the written directives of District with respect to any change pursuant to this Article, shall be considered an event of default and grounds for termination in accordance with **Articles 52, 53 and 54**.

Section 47.10. **Allowable Costs.** In the event that the District approves a Change Order on a time and material basis pursuant to **Section 47.6**, or in the event that the District issues a Unilateral Change Order pursuant to **Section 48.8**, allowable costs incurred shall be governed by this Section 48.10.

47.10.1. A Change Order on a time and material basis pursuant to **Section 48.6** or a Unilateral Change Order pursuant to **Section 48.8** shall both direct the Contractor to do the Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the Work as far as can be ascertained, the terms under which the changes to the Contract Sum will be determined and the maximum change in the Contract Sum allowed thereunder. The prior approval of the Change Order on a time and material basis or the Unilateral Change Order will be sufficient District for the Change Order within the limits of the estimated maximum total change in the Contract Sum. Without additional District, no costs exceeding the estimated amount will be paid.

47.10.2. The Contractor shall maintain such records as the District deems sufficient to distinguish the direct cost of time and material work from the cost of other operations. It shall furnish daily, on forms approved by the District, reports of time and material work. The reports shall itemize all costs for labor, materials, and equipment rental and give total costs to date for

the cost reimbursable work. For workers, the reports shall include hours worked, rates of pay, names and classifications. For equipment, the reports shall include size, type, identification number, rental rate, and hours of operation. All records and reports shall be made immediately available to the District upon its request. The cost of furnishing such reports shall be included in Contractor's overhead and fee percentages.

- 47.10.3. All time and material reports including daily time sheets shall be signed daily by the Contractor or its authorized representative and signed by the District. The District will compare its records with the Contractor's reports, make the necessary adjustments and compile the costs of time and material work. When such reports are agreed upon and signed by both parties, they will become the basis of payment to the extent provided in this **Article 47**. In no event shall such signed reports authorize payment in excess of the authorized estimated maximum total Change in Contract Sum.
- 47.10.4. Labor costs including welfare and fringe benefits, taxes and insurance shall be the actual labor costs incurred in the time and material work, including no more than one (1) working foreman but not including other supervisory or administrative personnel.
- 47.10.5. Material costs shall be the cost of all materials purchased and used in the work and shall be the actual cost of such materials, including sales taxes, where applicable freight and delivery charges. The District reserves the right to approve materials and sources of supply of materials, or if necessary to facilitate the progress of the Work, to furnish the materials to the Contractor.
- 47.10.6. The Contractor's cost and the time that machinery or construction equipment is required and efficiently used shall be determined as follows:
 - (a) For equipment owned by the Contractor or any related business entity, regardless of whether Contractor leases such equipment from the related business entity, the cost shall be the lesser of the Contractor's actual ownership cost or 75% of the applicable ownership cost listed in the most recent edition of the Contractor's Equipment Cost Guide, published by Dataquest.
 - (b) For equipment actually rented by the Contractor from an unrelated third party the cost shall be the

lesser of Contractor's actual rental cost, or 75% of the applicable equipment rates based on the most recent edition of the Rental Rate Bluebook for Construction Equipment, published by Dataquest. A reasonable rental cost shall be allowed as determined by the District when machinery and construction equipment not so listed is required.

The rate applied will be based on the daily/ weekly/monthly rate as determined by the District. In addition, the Contractor will be allowed reasonable move-in and move-out charges on heavy equipment, as determined by the District.

47.10.7. Construction equipment and tools having a replacement value of \$1,000 or less, whether or not consumed or used, shall be considered small tools and no payment will be made therefore.

47.10.8. Costs shall be substantiated by vendor's invoices submitted with the current reports or, if not then available, shall be submitted with subsequent reports. In no event shall the cost of such items exceed the average current wholesale prices at which the items are available in the quantities required, delivered to the Work Site, less cash or trade discounts.

47.10.9. The percentage fee that may be applied to the allowable costs shall be pursuant to **Section 48.6**.

Section 47.11.

Submission of Change Order Requests. If the Contractor believes that it is entitled to a Change Order pursuant to **Section 48.4**, the Contractor shall promptly notify the District of the event giving rise to the Change Order Request, and in any event, within ten (10) days after the occurrence of such event and shall also submit its Change Order Request to the District within such ten (10) day period or as soon thereafter as possible as agreed between the District and the Contractor, stating the date, circumstances, source of the order, general nature, effect on the Project Schedule and monetary extent of such claim including the impact costs of such changes and the Contractor regards the order as a Change Order Request. In the event that the District and Contractor agree to extend the ten (10) day limitation to file a request, a revised deadline will be established for filing the request.

If the District submits a Request for Proposal (RFP) to the Contractor, the Contractor shall submit its response to the Change Order Request (COR), to the District, within ten (10) days, unless otherwise agreed between the District, District and Contractor.

The District and the Contractor acknowledge and agree that any Change Order Request submitted by Contractor and any resulting Change Order shall include provision for any and all costs associated with the change, both with respect to changed work and unchanged work, whether direct, indirect, impact, or consequential in nature and any and all claims which Contractor may have relating to the change including but not limited to, delay, acceleration, interference, hindrance and/or impact claims.

Contractor's Change Order Request shall include provision for all taxes, except as otherwise excluded by these General Conditions.

Contractor's Change Order Request shall be accompanied by proposed revisions to the Project Schedule, if any, and more than one schedule scenario, if appropriate, which will result from the approval of the Change Order Request.

Section 47.12. **Time Limitations for Return of Change Orders.** The Contractor shall execute all Change Orders within seven days of receipt from District and shall return them to the District within three (3) days after execution.

Section 47.13. **Recordkeeping and Audit.** For purposes of **Section 47.6.3** or **Section 47.8**, the Contractor and Subcontractors shall keep complete and accurate financial records of all costs incurred in performing such Work under this Contract on the Work Site and shall make these records available to the District for audit and copying. No amount shall be payable by the District unless such records are kept and until such records have been made available to the District.

ARTICLE 48 NOTICE OF POTENTIAL CLAIM

Section 48.1. **Written Notice of Any Claim Required.** It is an express condition of Contractor's right to make a claim or to receive any recovery or relief under or in connection with the Contract, that Contractor submit a written notice of potential claim to the District in accordance with the provisions of this **Article**; provided, however, that with respect to requests for relief within the scope of **Article 47, CHANGES**, the Contractor shall submit a Change Order Request in accordance with the provisions of **Article 47** before initiating a claim under this **Article 48** and the following **Article 49**.

Failure to comply with the provisions hereof shall constitute a waiver by the Contractor of any right, equitable or otherwise, to bring any such claim against the District. Nothing in this **Article 48** or in **Article 49, SUBMITTAL OF CLAIMS**, is intended to expand the rights of the Contractor as they otherwise exist under the Contract.

Section 48.2. **Contents of Notice.** The written notice of potential claims shall set forth:

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- 48.2.1. the reasons for which the Contractor believes additional compensation will or may be due;
- 48.2.2. the nature of the costs involved;
- 48.2.3. contractor's plan for mitigating such costs; and
- 48.2.4. the amount of the potential claim.

Section 48.3. **Timing of Notice.** The Notice provided above shall be given within ten (10) days after the happening of the event or occurrence giving rise to the potential claim; provided, however, if the event or occurrence is claimed to be an act or omission of the District or District, notice shall be given prior to the time for performance of the portion of the Work to which such act or omission relates.

Section 48.4. **Non-Exclusive Provisions.** The notice requirements of this Article are in addition to any other notice requirements set forth in the Contract.

ARTICLE 49 SUBMITTAL OF CLAIMS

Section 49.1. **Filing of Claims; Timing.** Claims, including but not limited to claims for adjustments in Contract Time, Contract Sum, or for interpretation of the requirements of the Contract shall be submitted to the District in writing with a request for a formal decision by the District in accordance with the provisions of **Article 49**. Claims shall be submitted by the Contractor to the District within ten (10) days after the occurrence of the event or occurrence giving rise to the claim, in sufficient detail to allow the District to ascertain the basis and amount of said claims. With respect to claims arising out of Disputed Change Orders or Unilateral Change Orders, the Contractor shall submit its claim pursuant to this **Article 49** within ten (10) days after the District issues the Disputed Change Order or Unilateral Change Order. Failure of the Contractor to submit its claim within such ten (10) day period shall constitute a waiver of the Contractor's right to bring a claim with respect to that Disputed Change Order or Unilateral Change Order.

It will be the responsibility of the Contractor to furnish, when requested by the District, such further information and details as may be required to determine the facts or contentions involved in its claims, including, in the event that Contractor's claim arises out of a Disputed Change Order or Unilateral Change Order, a detailed statement responding to the District's position with respect to the Disputed Change Order or Unilateral Change Order. The Contractor agrees that it shall give the District access to its books, records and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that the District can investigate such claims.

- Section 49.2. **Decision by the District.** The District's Consultants shall review such claims and prepare a written report outlining the status of such claims and shall make recommendations to the District as to the ultimate disposition of such claims, within thirty (30) days after Contractor has provided the last of the information requested by the District pursuant to **Section 49.1** hereof. The District shall review the recommendations of the Consultants and render its decision on such claims. The rendering of such a decision by the District pursuant to this sub-article shall be a condition precedent to any exercise by the Contractor or the District of any rights or remedies that either party may have under the Contract Documents, at law, in equity or otherwise with respect to such claim.
- Section 49.3. **Claims for Time Adjustments.** Each claim the Contractor may make for an adjustment on account of delay for any cause shall be accompanied by a proposed revision to the Project Schedule reflecting the effects of the delay and proposals to minimize these effects.
- Section 49.4. **Additional Submittals.** Depending upon the grounds for relief and the nature of relief sought, additional submittals and conditions upon submitting claims may be required elsewhere in these Conditions.
- Section 49.5. **No Claims After Final Payment.** In no event shall claims be made after Final Payment is made under **Article 43, SUBSTANTIAL COMPLETION, FINAL COMPLETION; FINAL PAYMENT.**

ARTICLE 50 RESOLUTION OF DISPUTES

- Section 50.1. **Generally.** Except as otherwise expressly provided in the Contract Documents, all disputes and other matters in question between the Contractor and the District arising out of or relating to the Contract or the breach thereof, except for claims which have been waived by the making or acceptance of final payment pursuant to **Article 43** hereof, shall be decided in accordance with this **Article 50.**
- Section 50.2. **Mediation.** Any claim, dispute or action arising out of or relating to the Agreement or the breach thereof shall be submitted to non-binding mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, and such mediation shall be conducted in Wilmington, Delaware. The fees and expenses of the mediator and the mediating service shall be shared equally by the parties, and each party shall otherwise be responsible for the cost of its own efforts, personnel, counsel and experts in connection with such mediation.

In addition, Contractor expressly agrees (a) to be joined in any mediation between the District and one or more third parties giving rise to a claim by District or against the District relating to the Project and (b) to the joinder

of one or more third parties in any mediation between the District and Contractor where such mediation gives rise to a claim by the District against such third parties.

Section 50.3. **Choice of Forum.** Any such claim, dispute or action not resolved through mediation shall be decided exclusively in the courts of New Castle County, Delaware. The District and the Contractor agree to waive the right to a jury trial.

Section 50.4. **Work Continues During Disputes.** In the event of any dispute, controversy or question between District and Contractor with respect to the interpretation of the Contract, the performance of any portion of Contractor's services, or any other matter arising under or relating to the Contract, the District and Contractor agree that pending the resolution or settlement of such dispute, controversy or question, Contractor shall continue to perform its services without interruptions or delay and shall not directly or indirectly stop or delay their performance, and the District shall make payment in accordance with the Contract of all undisputed amounts when due.

ARTICLE 51 TERMINATION FOR CONVENIENCE OF THE DISTRICT

Section 51.1. **Notice of Termination.** The performance of Work under the Contract may be terminated by the District in accordance with this Article in whole, or, from time to time, in part, for any legitimate and proper reason. Such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

Section 51.2. **Obligations of Contractor Upon Termination.** After receipt of a Notice of Termination, and except as otherwise directed by the District (it being specifically acknowledged that the District may require the Contractor to assign the Subcontract and/or material supply contract relating to the terminated Work directly to the District such that the District may continue the Work of Subcontractors and that the Contractor's agreements with its Subcontractors shall so allow), the Contractor shall:

51.2.1. stop work under the Contract on the date and to the extent specified in the Notice of Termination;

51.2.2. place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;

- 51.2.3. cancel or terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
- 51.2.4. assign to the District in the manner, at the times, and to the extent directed by the District, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case, the District will have the right, in its sole discretion, but not the obligation, to settle or pay any or all claims arising out of the termination of such orders and subcontract;
- 51.2.5. settle outstanding liabilities and claims arising out of such termination of orders and subcontracts, with the approval or ratification of the District, to the extent it may be required, which approval or ratification shall be final for the purposes of this Article;
- 51.2.6. transfer title and deliver to the District in the manner, at the times, and to the extent, if any, parts, work in process, completed work, supplies and other material procured as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination, and the completed or partially completed plans, drawings, information, and other property, which if the Contract had been completed, would have been required to be furnished to the District;
- 51.2.7. use its best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the District, property of the types referred to in (6) above; provided, however, that the Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the District; provided, further, that the proceeds of any such transfer or disposition will be applied in reduction of any payments to be made by the District to the Contractor under the Contract or will otherwise be credited to the price or cost of the Work covered by the Contract or paid in such other manner as the District may direct;
- 51.2.8. complete performance of each part of the Work as shall not have been terminated by the Notice of Termination in accordance with the Contract;
- 51.2.9. take such action as may be necessary, or as the District may direct, for the protection and preservation of the property related

to this Contract which is in the possession of the Contractor and in which the District has or may acquire an interest; and

51.2.10. comply with all other requirements of the District as may be specified in the Notice of Termination.

Section 51.3.

Termination Claim. After receipt of a Notice of Termination, the Contractor shall submit to the District its termination claim, in the form and with certification prescribed by the District. Such claim shall be submitted promptly but in no event later than six (6) months from the effective date of the termination, unless one or more extensions in writing are granted by the District, upon request of the Contractor made in writing within such six (6) month period or authorized extension thereof. However, if the District determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the District may determine, on the basis of information available, the amount, if any, due the Contractor by reason of the termination and will thereupon pay the Contractor the amount so determined.

Section 51.4.

Components of Amount to be Paid. Subject to the provisions of sub-article C of this Article, the Contractor and the District may agree upon the whole or part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of Work pursuant to this Article, which amount or amounts may include an allowance for profit solely on Work done; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the Contract Sum payable with respect to Work other than the Work terminated. The Contract will be amended accordingly, and the Contractor will be paid the agreed amount. Nothing in **Section 51.6** (prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the District to agree upon amount to be paid to the Contractor by reason of the termination of Work pursuant to this **Article**) shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this **Section 51.4**.

Section 51.5.

Agreement As to Amount to be Paid. In the event of failure of the Contractor and the District to agree, as provided in **Section 51.4**, upon the whole amount to be paid the Contractor by reason of the termination of Work pursuant to this **Article**, the District will pay the Contractor the amounts determined by the District as follows, but without duplication of any amounts agreed upon in accordance with **Section 51.4**, with respect to Work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:

- (a) The cost of such Work reduced to account for defective work not remedied;
- (b) The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in **Section 51.2.5** above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination of Work under the Contract, which amounts shall be included in the cost on account of which payment is made under (a) above;
- (c) A sum, as profit on (a) above, determined on pro rata based on the portion of the Contract Work satisfactorily performed prior to the termination; and
- (d) The reasonable cost of the preservation and protection of property incurred pursuant to **Section 51.2.9** and any other reasonable cost incidental to termination of Work under the Contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of Work under the Contract.
- (e) In no event shall the District be responsible for unabsorbed or underabsorbed overhead as part of termination claims under this **Section**.

Section 51.6. **Cap on Amount to be Paid.** The total sum to be paid to the Contractor under **Section 51.5.1** above will not exceed the Contract Sum, as reduced by the amount of payments otherwise made and as further reduced by the Contract Sum payable with respect to Work other than the Work terminated. Except for normal spoilage, and except to the extent that the District will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to the Contractor under **Section 51.5.1** above, the fair value, as determined by the District, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the District, or to a buyer pursuant to **Section 51.2.7** of this Article.

Section 51.7. **Deductions from Amount to be Paid.** In arriving at the amount due the Contractor under this Article, there will be deducted, (1) any claim which the District may have against the Contractor in connection with the Contract including but not limited to a credit for defective work and (2) the agreed price for, or the proceeds of sale of, materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of this Article, and not otherwise recovered by or credited to the District.

- Section 51.8. **Partial Termination.** If the termination hereunder be partial, prior to the settlement of the terminated portion of this Contract, the Contractor may file with the District a request in writing for an adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such adjustment as may be agreed upon will be made in such price or prices.
- Section 51.9. **Payments on Account of Termination Payment.** The District may from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on accounts against cost incurred by the Contractor in connection with the terminated portion of the Contract whenever in the opinion of the District the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article, such excess shall be payable by the Contractor to the District upon demand together with interest at a rate equal to the highest rate permitted by applicable law.
- Section 51.10. **Preservation of Records.** Unless otherwise provided for in the Contract or by applicable statute, the Contractor, from the effective date of termination and for a period of three (3) years after final settlement under the Contract, shall preserve and make available to the District at all reasonable times at the office of the Contractor but without direct charge to the District, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the work terminated hereunder, or to the extent approved by the District, photographs, microphotographs, or other authentic reproductions thereof.
- Section 51.11. **Flow Through to Subcontractors.** The Contractor shall insert in all subcontracts that the Subcontractor shall stop Work on the date of and to the extent specified in a Notice of Termination from the District and shall require that any tier Subcontractors insert the same provision in any tier subcontracts.
- Section 51.12. **Communication to Subcontractors.** The Contractor shall communicate, immediately upon receipt thereof, any Notice of Termination issued by the District to the affected Subcontractors of any tier.
- Section 51.13. **No Other Payments; No Damages.** Under no circumstances is the Contractor entitled to anticipatory, unearned profits or consequential damages as a result of a termination or partial termination under this **Article**. The payment to the Contractor determined in accordance with this Article constitutes its exclusive remedy for a termination hereunder.

Section 51.14. **No Waiver.** Anything contained in the Contract to the contrary notwithstanding, a termination under this Article 51 shall not waive any right or claim to damages which the District may have and the District may pursue any cause of action which it may have under the Contract.

ARTICLE 52
TERMINATION FOR FAILURE TO PROCEED OR COMPLETE

Section 52.1. **Failure to Proceed or Complete.** If the Contractor refuses or fails to prosecute Work, or any separable part thereof, with such diligence as will insure its completion within the Contract Time, or any extension thereof, or refuses or fails to complete said Work within such time, the District may, by five (5) days prior written notice to the Contractor, terminate for default its right to proceed with the Work or such part of the Work as to which there has been delay. In such event, the District may take over the Work and prosecute the same to completion, by contract or otherwise and may take an assignment of any or all applicable subcontracts and may take possession of and utilize in completing the Work on such materials, appliances and plant as may be on the Work Site and necessary therefor. Whether or not the Contractor's right to proceed with the Work is terminated, it and its surety shall be liable for any damage to the District resulting from the Contractor's refusal or failure to complete the Work in accordance with the terms of the Contract and within the specified time.

Section 52.2. **Damages.** If the District so terminates the Contractor's right to proceed, the resulting damage will include but not be limited to liquidated and/or actual damages for delay until such time as may be required for Substantial Completion of the Work plus any increased costs incurred by the District in completing the Work and any claims made by third parties against the District relating to the Work.

Section 52.3. **No Termination if Entitled to Extension of Time.** The Contractor's right to proceed will not be terminated or the Contractor charged with resulting damage if the delay is such as would entitle the Contractor to an extension of time in accordance with **Article 40, DELAY, SUSPENSION OF WORK; EXTENSION OF TIME**, and Contractor has complied with the requirements thereunder.

Section 52.4. **Relation to Termination for Convenience.** If, after Notice of Termination of the Contractor's right to proceed under the provisions of this Article, it is determined for any reason that the Contractor was not in default under the provisions of this Article, or that the Contractor was entitled to an extension of time under **Article 40, DELAY, SUSPENSION OF WORK; EXTENSION OF TIME**, the rights, obligations and remedies of the parties shall be the same as if the Notice of Termination had been issued pursuant to **Article 51, TERMINATION FOR CONVENIENCE OF THE DISTRICT**. The Contractor shall

insert in all subcontracts the terms of this **Section 52.4** and shall require that any tier Subcontractors insert the same provision in any tier subcontracts.

Section 52.5. **Non-Exclusive Remedy.** The right to terminate for default and any other rights and remedies of the District provided in this Article are in addition to any other rights and remedies provided by law or under the Contract.

ARTICLE 53 TERMINATION FOR OTHER DEFAULTS

Section 53.1. **Default Terminations.** In addition to the District's right to terminate for default under other Articles of these Conditions, the District will have the right to terminate the Contractor's performance of Work in whole or in part for default for any of the following reasons:

- 53.1.1. the Contractor's or Subcontractor's performance of Work is in violation of the terms of the Contract;
- 53.1.2. the Contractor or Subcontractor has violated an authorized order or requirement of the District;
- 53.1.3. abandonment of the Contract;
- 53.1.4. assignment or subcontracting of the Contract or any Work under the Contract without approval of the District;
- 53.1.5. bankruptcy of the Contractor or appointment of a receiver for the Contractor's property;
- 53.1.6. performance by the Contractor in bad faith;
- 53.1.7. Contractor allowing any final judgment to remain unsatisfied for a period of forty-eight (48) hours (excluding weekends and legal holidays);
- 53.1.8. material failure to comply with any law, ordinance, rule, regulation or order of a legal District applicable to the Contractor, the Work, the Contract or the Project;
- 53.1.9. failure to indemnify any party which the Contractor is obligated to indemnify under **Article 9, LIABILITY AND INDEMNIFICATION**, or elsewhere under the Contract.
- 53.1.10. failure to award a Subcontract to the selected Subcontractor approved by the District.

Section 53.2. **Notice of Default; Cure Period.** If, in the opinion of the District, the Contractor is in default of the Contract, the District will so notify the Contractor. If the Contractor fails to take affirmative steps to remedy (which steps are appropriate to the scope of the necessary remedy) the default within ten (10) days after receipt of such notice, the District may terminate the Contractor's right to proceed with the Work or that portion of the Work which the District determines is most directly affected by the default.

Section 53.3. **Relation to Termination for Convenience.** If, after Notice of Termination of the Contractor's right to proceed under the provisions of this Article 53, it is determined for any reason that the Contractor was not in default under the provisions of the Article or that the Contractor was entitled to an extension of time under **Article 40, DELAY, SUSPENSION OF WORK; EXTENSION OF TIME**, the rights and obligations and remedies of the parties shall be the same as if the Notice of Termination had been issued pursuant to **Article 51, TERMINATION FOR CONVENIENCE OF THE DISTRICT**. The Contractor shall insert in all subcontracts the terms of this sub-article and shall require that any tier subcontractors insert the same provision in any tier subcontracts.

ARTICLE 54 RIGHTS AND OBLIGATIONS IN TERMINATION FOR DEFAULTS

Section 54.1. **Limited Applicability of Article.** This Article shall apply to terminations for default under **Article 52, TERMINATION FOR FAILURE TO PROCEED** and **Article 53, TERMINATION FOR OTHER DEFAULTS**.

Section 54.2. **Contractor's Obligations Upon Notice of Termination.** On receipt of a Notice of Termination from the District, the Contractor shall:

- 54.2.1. stop all Work under the Contract on the date and to the extent specified in the Notice of Termination.
- 54.2.2. place no further orders or subcontracts for materials, equipment or services except as may be necessary for completion of such portions of the Work expressly excluded under the Notice of Termination.
- 54.2.3. cancel or terminate all orders or subcontracts to the extent that they relate to the performance of work covered by the Notice of Termination.
- 54.2.4. comply with all other requirements of the District as may be specified in the Notice of Termination.

54.2.5. perform the obligations set forth in **Paragraphs 51.2.4 and 51.2.6 of Section 51.2 of Article 53, TERMINATION FOR CONVENIENCE OF THE DISTRICT.**

Section 54.3. **District's Right to Complete the Work.** Upon the District's termination of the Contractor's right to proceed with the Work because of the Contractor's default under the Contract, the District will have the right to complete the Work by whatever means and method it deems advisable. The District will have the right to take possession of and use any or all the Contractor's materials, plant, tools, equipment and property of any kind provided by or on behalf of the Contractor for the purpose of the Work, or a portion of them, at the expense of the Contractor. The Contractor shall have no rights in such property during their use by the District. The District will not be required to obtain the lowest prices for completing the Work but shall make such expenditures as, in the District's sole judgment, best accomplish such completion.

Section 54.4. **Contractor Bears Expense of Completing.** The expense of completing the Work, together with a reasonable charge for engineering, managerial and administrative services, as certified by the District, will be charged to the Contractor and the expense so charged will be deducted by the District out of such monies as may be due or may at any time thereafter become due to the Contractor. In case such expense is in excess of the sum which otherwise would have been payable to the Contractor under the Contract, then the Contractor or his surety shall promptly pay the amount of such excess to the District upon notice of the excess so due. The District may, in its sole discretion, withhold all or any part of any progress payments otherwise due the Contractor until completion and final settlement of the Work covered by the Notice of Termination of Contractor's right to proceed.

Section 54.5. **Flow Through to Subcontractors.** The Contractor shall insert in all subcontracts that the Subcontractor will stop work on the date and to the extent specified in a Notice of Termination from the District and shall require the Subcontractors to insert the same provision in any tier subcontracts.

Section 54.6. **Communication of Notice to Subcontractors.** The Contractor shall immediately upon receipt communicate any Notice of Termination issued by the District to the affected Subcontractors and Suppliers at any tier.

Section 54.7. **Non-exclusive Remedy.** The rights and remedies of the District set forth in this Article 54 are in addition to any other rights and remedies provided by law or under the Contract.

ARTICLE 55
STATUTE OF LIMITATIONS, DISPUTE RESOLUTION

The Contractor and the Contractor's surety agree that for the purpose of any statutes of limitations which may govern the District's right to assert a claim or bring suit against the Contractor or the Contractor's surety for anything arising out of the Contract, such statute shall not begin to run, or in any event the running thereof shall be tolled, until Final Completion of the Contractor's Work under the Contract.

ARTICLE 56
COMPLETE AGREEMENT OF THE PARTIES

The Contract represents the entire and integrated agreement of the parties and supersedes all prior negotiations, representations or agreements, whether written or oral.

DRAWING INDEX

<u>SHEET NO.</u>	<u>TITLE</u>
G-1	COVER SHEET & PROJECT INFORMATION
S-0	STRUCTURAL NOTES & SPECIFICATIONS
S-1	BLEACHER PLAN & DETAILS
S-2	BLEACHER SYSTEM FOUNDATION PLAN
S-3	BLEACHER SECTION AND DETAILS
S-4	CONSTRUCTION PLAN
S-5	PRESSBOX DETAILS
C-1	SITE PLAN
C-2	SITE AND EROSION & SEDIMENT CONTROL NOTES AND DETAILS

END OF SECTION 00850

1 GENERAL

1.01 REQUIREMENTS INCLUDED

- A. Work covered by the Contract Documents
- B. Contract Method
- C. Work Sequence.
- D. Contractor Use of Premises.
- E. Owner Occupancy.
- F. Owner-furnished Products.
- G. Allowances.
- H. Alternates.
- I. Unit Prices
- J. Applications for Payment.
- K. Owner Supplied Construction Documents
- L. Coordination.
- M. Field Engineering
- N. Reference Standards

1.02 WORK COVERED BY CONTRACT DOCUMENTS

- A. The work includes, but is not necessarily limited to, the construction of a concrete and asphalt path and fiber reinforced polymer bridge, and all else required to complete the project in accordance with the drawings and specifications.

1.03 CONTRACT METHOD

- A. Construct the work under a single, lump sum contract.
- B. Items noted "NIC" (Not in Contract), will be furnished and installed by others.

1.04 WORK SEQUENCE

- A. Construct work in stages to accommodate owner's occupancy requirements during the construction period; coordinate construction schedule and operations.
- B. Begin work within seven (7) days after issuance of a State purchase order and Notice to Proceed and be substantially completed within 80 working days.

1.05 CONTRACTOR USE OF PREMISES

- A. Limit use of premises for work and for construction operations to allow for owner occupancy.
- B. Coordinate use of premises under direction of owner.

1.06 OWNER OCCUPANCY

- A. Owner will occupy premises during entire period of construction for the conduct of his normal operations. Cooperate with owner to minimize conflict, and to facilitate owner's operations.

1.07 OWNER-FURNISHED PRODUCTS:

- A. None

1.08 SCHEDULE OF ALLOWANCES

- A. None

1.09 ALTERNATES

- A. Alternates quoted on bid forms will be exercised as owner option. Accepted alternates will be listed in owner-contractor agreement
- B. Coordinate related work and modify surrounding work affected by accepted alternates as required to complete the work.
- C. Schedule of Alternates: (Refer to Bid Form)

1.10 UNIT PRICES

- A. Unit Prices quoted on bid forms will be exercised as owner option.
- B. Coordinate related work and modify surrounding work affected by accepted unit prices as required to complete the work.
- C. Schedule of Unit Prices: (Refer to Bid Form)

1.11 APPLICATIONS FOR PAYMENT:

- A. Submit 3 copies of each application under procedures of Section 00800.
- B. Content and Format: Use clear and organized format acceptable to owner..

1.12 OWNER SUPPLIED CONSTRUCTION DOCUMENTS:

- A. The awarded contractor will be furnished, free of charge, ten (10) copies of drawings and project manuals (or less if requested). Additional sets will be furnished at the cost of reproduction, postage and handling.

1.13 COORDINATION:

- A. Coordinate work of the various sections of specifications to assure efficient and orderly sequence of installation of construction elements, with provisions for accommodating items installed later.
- B. Verify characteristics of elements of interrelated operating equipment are compatible; coordinate work of various sections having interdependent responsibilities for installing, connecting to, and placing in service, such equipment.
- C. Coordinate space requirements and installation of mechanical, electrical and plumbing work which are indicated diagrammatically on drawings. Follow routing shown for pipes, ducts, and conduits, as closely as practicable; make runs parallel with lines of building. Utilize spaces efficiently to maximize accessibility for other installations, for maintenance, and for repairs.
- D. In finished areas (except as otherwise shown,) conceal pipes, ducts, and wiring in

the construction. Coordinate locations of fixtures and outlets with finish elements.

- E. Execute cutting and patching to integrate elements of work, uncover, ill-timed, defective, and non-conforming work, provide openings for penetrations of existing surfaces, and provide samples for testing. Seal penetrations through floors, walls, and ceilings.

1.14 FIELD ENGINEERING

- A. Provide field engineering services; establish grades, lines, and levels, by use of recognized engineering survey practices.
- B. Control datum for survey is that shown on drawings. Locate and protect control and reference points.

1.15 REFERENCE STANDARDS

- A. For products specified by association or trade standards, comply with requirements of the standard, except when more rigid requirements are specified or are required by applicable codes.
- B. The date of the standard is that in effect as of the bid date, except when a specific date is specified.
- C. Obtain copies of standards when required by contract documents. Maintain copy at job site during progress of the specific work.

END OF SECTION 01005

1 GENERAL

- 1.01 Definitions: Basic Contract definitions are included in the General Conditions.
- A. Indicated refers to graphic representations, notes or schedules on Drawings, or Paragraphs or Schedules in Specifications, and similar requirements in Contract Documents. Where terms such as "shown", "noted", "scheduled", and "specified" are used, it is to help locate the reference.
 - B. Directed: Terms such as "directed", "requested", "authorized", "selected", "approved", "required", and "permitted" mean "directed by the Engineer", "requested by the Engineer", and similar phrases. No implied meaning shall be interpreted to extend the Owner's Representative's responsibility into the Contractor's supervision of construction.
 - C. Approve. used in conjunction with action on submittals, applications, and requests, is limited to the Owner's Representative's duties and responsibilities stated in General and Supplementary Conditions. Approval shall not release the Contractor from responsibility to fulfill Contract requirements.
 - D. Regulation includes laws, ordinances, statutes and lawful orders issued by authorities having jurisdiction, and rules, conventions and agreements within the construction industry that control performance of the Work, whether lawfully imposed by authorities having jurisdiction or not.
 - E. Furnish means "supply and deliver, ready for unloading, unpacking, assembly, installation, and similar operations."
 - F. Install describes operations at the site including "unloading, unpacking, assembly, erection, anchoring, applying, working to dimension, protecting, cleaning and similar operations."
 - G. Provide means "furnish and install, complete and ready for use."
 - H. Installer: "Installer" is the Contractor or an entity engaged by the Contractor, as an employee, subcontractor or sub-subcontractor for performance of a particular construction activity, including installation, erection, application and similar operations. Installers are required to be experienced in the operations they are engaged to perform.
The term "experienced", when used with "Installer" means having a minimum of 5 previous Projects similar in size to this Project, and familiar with the precautions required, and with requirements of the authority having jurisdiction.
 - I. Project Site is the space available for construction activities, either exclusively or with others performing other construction on the Project. The extent of the Project Site shall be as directed by the Owner's Representative, and may or may not be identical with the description of the land upon which the Project is to be built.
 - J. Testing Laboratories: A "testing laboratory" is an independent entity engaged to perform specific inspections or tests, at the Project Site or elsewhere, and to report on, and, if required, to interpret results of those inspections or tests.

- K. Working Day: Any calendar day, except: 1) Saturdays, Sundays, and holidays; 2) days where conditions identified in the Contract require the Contractor to suspend construction operations; 3) days with inclement weather that prevents prosecution of the scheduled work. On inclement weather days that result in partial prosecution of the work, partial working days will be charged as determined by the Engineer. Partial working days will be charged in one-quarter day increments. If the Contractor receives permission from the Engineer to work on a Sunday or holiday, full working days will be charged, weather permitting. No time charge will be assessed if the Contractor elects to work on Saturdays. Should the Contractor prepare to begin work on any day on which inclement weather prevents the work from beginning at the usual starting time and the crew is dismissed as a result, the Contractor will not be charged for a working day whether or not conditions change during the day and the rest of the day becomes suitable for construction operations.

1.02 SPECIFICATION FORMAT & CONTENT EXPLANATION

- A. Specification Format: These specifications are organized into Divisions and Sections based on the Construction Specifications Institute's 16-Division format and MASTER FORMAT numbering system.
- B. Language used in the Specifications is the abbreviated type. Implied words and meanings will be appropriately interpreted. Singular words will be interpreted as plural and plural words interpreted as singular where applicable and where the context so indicates.
1. Imperative language is used generally. Requirements expressed in the imperative mood are to be performed by the Contractor. At certain locations in the text subjective language is used to describe responsibilities which must be fulfilled indirectly by the Contractor, or by others when so noted.

The words "shall be" shall be included by inference wherever a colon (:) is used within a sentence or phrase.

- C. Assignment of Specialists: Certain construction activities shall be performed by specialists, recognized experts in the operations to be performed. Specialists must be engaged for those activities, and assignments are requirements over which the Contractor has no option. Never the less, the ultimate responsibility for fulfilling Contract requirements remains with the Contractor.

1.03 DRAWING OF SYMBOLS

- A. General: Where not otherwise noted, symbols are defined by "Architectural Graphic Standards", published by John Wiley & Sons, Inc., ninth edition.
- B. Mechanical/Electrical Drawings: Graphic symbols on mechanical and electrical Drawings are aligned with symbols recommended by ASHRAE. Where appropriate, they are supplemented by symbols recommended by technical associations. Refer instances of uncertainty to the Engineer for clarification before proceeding.

1.04 INDUSTRY STANDARDS

- A. Applicability of Standards: Except where the Contract Documents include more stringent requirements, applicable industry standards have the same force and effect as if bound or copied into Contract Documents. Such standards are part of the Contract Documents by reference. Individual Sections indicate standards the Contractor must keep available at the Project Site.
- B. Publication Dates: Where the date of issue of a referenced standard is not specified, comply with the standard in effect as of date of Contract Documents.
1. Updated Standards: Submit a Change Order proposal where an applicable standard has been revised and reissued after the date of the Contract Documents and before performance of Work. The Engineer will decide whether to issue a Change Order to proceed with the updated standard.
- C. Conflicting Requirements: Where compliance with two or more standards that establish different or conflicting requirements for minimum quantities or quality levels, the most stringent requirement will be enforced. Refer uncertainties as to which quality level is more stringent to the Engineer for a decision before proceeding.
1. Minimum Quantities or Quality Levels: The quantity or quality shown or specified is the minimum to be provided or performed. Indicated values are minimum or maximum values, as appropriate for the requirements. Refer instances of uncertainty to the Engineer for decision before proceeding.
- D. Copies of Standards: Each entity engaged on the Project shall be familiar with standards applicable to that activity. Copies of applicable standards are not bound with the Contract Documents.
1. Where copies of standards are needed for performance of a required construction activity, the Contractor shall obtain copies directly from the publication source.
2. Although copies of standards needed for enforcement of requirements may be part of submittals, the Owner's Representative reserves the right to require submittal of additional copies for enforcement of requirements.
- E. Abbreviations and Names: Where acronyms or abbreviations are used in the Specifications or other Contract Documents they mean the recognized name of the trade association, standards generating organization, authority having jurisdiction or other entity applicable. Refer to the "Encyclopedia of Associations", published by Gale Research Co., available in most libraries.
- F. Permits, Licenses, and Certificates: For the Owner's records, submit copies of permits, licenses, certifications, inspection reports, releases, jurisdictional settlements, notices, receipts for fee payments, judgments, and similar documents, correspondence and records established in conjunction with compliance with standards and regulations bearing upon performance of the Work.

END OF SECTION 01090

NOT FOR BIDDING

1 GENERAL

1.1 WORK COVERED BY CONTRACT DOCUMENTS

- A. Work covers bulk demolition, selective demolition and construction for the completion of the Project as shown and as specified including all cutting, patching and refinishing required to restore the premises to the condition prevailing before construction operations began.
- B. Carefully examine the bidding documents, visit the site of the Work, become fully informed as to all existing conditions and limitations, including the structure of the ground, sub-surface conditions, the obstacles which may be encountered, local restrictions, and all other relevant matters concerning the Work to be performed, and include in the Contract a sum to cover the cost of all such items.

1.2 CONTRACTS

- A. Construct Work under single General Construction Contract including General Construction, Mechanical, Electrical, Plumbing and Utility Work.

1.3 WORK BY OTHERS

- A. A/EOR to indicate all work that is to be completed by others.

1.4 WORK UNDER OTHER CONTRACTS

- A. Cooperate fully with separate contractors so that work under separate contracts may be carried out smoothly, without interfering with or delaying work under this Contract.

1.5 OWNER-FURNISHED PRODUCTS

- A. Refer to construction documents for owner-furnished products.
- B. Owner's Duties:
 - 1. Provide the Project General Contractor with contact information required for the Owner Furnished Product Vendor.
 - 2. Arrange guarantees, warranties.
- C. Architect/Engineer of Record Duties:
 - 1. Arrange for and deliver necessary shop drawings, product data, and samples to the Project General Contractor.
- D. Project General Contractor's Duties:
 - 1. Designate required delivery date for each product in Construction Schedule.
 - 2. Schedule delivery of Products with the Product Vendor a minimum of (14) days in advance of the required Product delivery date.

3. Promptly inspect delivered products, complete the Equipment Receipt Verification Form and receive Products that meet the Project requirements.
4. Handle Products at the site including offloading, uncrating, disposal of crating material and storage, if required, in accordance with the manufacturer's instructions.
5. Protect from exposure to elements and from other damage.
6. Repair or replace items damaged as result of Project General Contractor's operations.
7. Install, connect and finish Products in accordance with the Project requirements.
8. Schedule and perform Product start-up in accordance with specific Product specifications. The Project General Contractor is not responsible for any Vendor costs associated with start-up.

1.6 USE OF PREMISES

- A. Do not unreasonably encumber site with materials or equipment.
- B. Do not load structure with weight that will endanger structure.
- C. Move stored products, which interfere with operations of Owner or other Contractor.
- D. Obtain and pay for use of additional storage or work areas needed for operations.
- E. Limit use of site for Work and storage:
 1. As directed by Owner.
 2. To allow for the work of other Contractors.
 3. To allow use by the public.
- F. Refer also to Section 01500.

1.7 OWNER OCCUPANCY

- A. Owner shall have continued occupancy to existing playing fields for the duration of the contract. A/EOR to provide specific information with respect to the Owner's use of the site and/or specific areas of the site during construction.
- B. Coordinate with the Owner's representative all construction operations to minimize conflict and to facilitate Owner usage.
- C. Conduct operations to minimize inconvenience to the public.

END OF SECTION 01110

1 GENERAL

1.1 SUMMARY

- A. Changes to be made under each Alternate.
- B. Coordinate pertinent related Work and modify surrounding Work as required to complete the Work under each Alternative designated in the Owner/Project General Contractor Agreement.
- C. Insert appropriate alternative values in the associated numbered spaces provided on the Bid Form. Note that all alternates are additive.

1.2 DESCRIPTION OF ALTERNATIVES (The A/EOR is to provide a description of each alternate that is listed on the bid form. All alternates are to be additive.)

- A. Alternate No.1: State the amount to be added to the Base Bid for providing a hot-mix asphalt pedestrian path in lieu of GABC path, as detailed in the construction documents.
- B. Alternate No.2: State the amount to be added to the Base Bid for providing a concrete pedestrian path in lieu of GABC path, as detailed in the construction documents.
- C. Alternate No.3: State the amount to be deducted to the Base Bid for providing Black vinyl coated chain-link fence (1" mesh) along bleachers per drawings.
- D. Alternate No. 4: State the amount to be added to the Base Bid for providing stone and geotextile fabric under proposed bleachers per drawings.
- E. Alternate No. 5: Accelerated project schedule for substantial completion on or before October 1, 2013

END OF SECTION 01230

1 GENERAL

1.1 MINOR CHANGES

- A. The Architect/Engineer of Record may make a minor change in the Work not involving a change in cost or time by providing the Project General Contractor with an Architectural Supplemental Instructions (ASI) form.
- B. If the Project General Contractor disputes the Architect/Engineer of Record's determination that a change in Contract cost or time is not involved, the Project General Contractor shall immediately, but not later than three (3) days after receipt of such Architectural Supplemental Instructions notify the Architect/Engineer of Record in writing of the Project General Contractor's proposed adjustment in Contract cost or time and further within ten (10) days shall inform the Architect/Engineer of Record in writing with appropriate back-up sufficient as determined by the Architect/Engineer of Record to demonstrate such adjustments.
- C. Proceeding with such minor change without said notification shall evidence agreement with the Architect/Engineer of Record's determination.

1.2 CHANGE PROPOSAL REQUESTS

- A. The Architect/Engineer of Record, through the Architectural Supplemental Instructions form, may request a Change Proposal from the Project General Contractor.
- B. Such Architectural Supplemental Instructions with a Change Proposal Request are not an authorization to proceed with ordering materials or with the associated Work.
- C. The Contractor shall execute every Change Proposal Request and return it to the Architect within the time frame set forth in such request or if not set forth, within ten (10) days, stating the proposed change in cost and time of the Contract.
- D. The proposed cost shall be broken down by materials and labor by subcontractor, trade and supplier with back-up from each subcontractor, trade and supplier including Contractors own forces sufficient as determined by the Architect/Engineer of Record to demonstrate such adjustment.
- E. Proposed changes in Contract time shall be supported by written explanation with back up from each involved subcontractor, trade and supplier.

1.3 ARCHITECTURAL SUPPLEMENTAL INSTRUCTIONS WITH CHANGE ORDER REQUEST

- A. The Architect/Engineer of Record, on behalf of the Owner, may prepare Architectural Supplemental Instructions directing changes in the Work, cost and time.
- B. The Project General Contractor shall prepare a Change Order Request in accordance with Section 01250.1.02. and the Contract General Conditions.

- C. After Owner acceptance of the Change Order Request and receipt of a fully executed Contract Change Order and Purchase Order Modification from the Owner, the Project General Contractor shall immediately proceed with such changes.
- D. By signing the Contract Change Order, the Project General Contractor agrees to the terms set forth including the change in the Work, cost and time. Changes made to said Contract Change Order by the Project General Contractor will not be valid.
- E. If the Project General Contractor does not agree with the terms of a Contract Change Order, the Project General Contractor shall immediately make a claim setting forth in detail, including back up, the basis of such disagreement. The Project General Contractor shall not proceed with the Work associated with a disputed Contract Change Order without receipt of a directive from the Owner.

1.4 VALUE OF CHANGES IN THE CONTRACT

- A. Refer to General Conditions of the Construction Contract for the approved Methods of Establishing the Value of Changes to the Contract.

END OF SECTION 01250

1 GENERAL

1.1 SCHEDULE OF VALUES/APPLICATION FOR PAYMENT

- A. The Project General Contractor shall submit to the Architect/Engineer of Record a Schedule of Values of the various portions of the Work, including quantities if required by the Architect/Engineer of Record, aggregating the total Contract Sum, divided so as to facilitate payments to Subcontractors prepared on AIA Forms G702 and G703, and supported by such data to substantiate its correctness as the Architect/Engineer of Record may require. This Schedule shall be used only as a basis for the Project General Contractor's Applications for Payment.
- B. Include in each line item amount of Allowances specified in Section 01210. For unit cost Allowances, give quantities measured from Contract Documents multiplied by the unit cost equal to the total for the item.
- C. Include separate line item for cost of Bonds.
- D. Include separate line item for Contractor's General Conditions.
- E. Include line item for each trade to be performed by Contractor's own forces.
- F. Include line item for each Sub-Contract identifying the Sub-Contractor.
- G. For large line item amounts, Architect/Engineer of Record may request further break down to facilitate monitoring.
- H. Revise schedule to list Change Orders and Construction Change Directives for each Application for Payment. Where a cost has been established, list the cost of each Change Order or Construction Change Directive separately under each line item on the schedule. Where a cost has not been established, and the Work will be done on a time and materials basis, provide a separate schedule for each utilizing the appropriate names for each line item in the supplementary schedule as is used in the original schedule, list materials and distributing the amount to each line item. In the latter event, submit invoices for materials and accounting of labor by categories sufficient for the Architect/Engineer of Record to verify amount owed.
- I. The first payment application shall be accompanied by the Contractor's Partial Waiver of Lien only, for the full amount of the payment. Each subsequent monthly payment application shall be accompanied by the Project General Contractor's Partial Waiver, and by the Partial Waivers of Subcontractors and Suppliers who were included in the immediately preceding payment application to the extent of that payment. Application for Final Payment shall be accompanied by Final Waivers of Lien from the Project General Contractor, Subcontractors and Suppliers who have not previously furnished such Final Waivers. Final Waivers shall be for the full amount of the Contract.
- J. Transmittal: Submit three (4) signed and notarized original copies of each Application for Payment to the Architect/Engineer of Record by a method ensuring receipt within 24 hours. One copy shall be complete, including waivers of lien and similar attachments, when required.

- K. Transmit each copy with a transmittal form listing attachments and recording appropriate information related to the application, in a manner acceptable to the Architect/Engineer of Record.

END OF SECTION 01290

1 GENERAL

1.1 SUMMARY

- A. Section Includes: Method of Obtaining Documents on Electronic Media from the Architect/Engineer.
- B. Description:
 - 1. Bidding: The drawings shall not be made available in electronic format for bidding purposes.
 - 2. Submittal Process: The drawings are available in electronic form in AutoCAD R2010 drawing file format, usable for preparation of required submittals only, in whole to the Project General Contractor.
 - 3. Record Documents: The drawings are available in electronic form in AutoCAD R2010 drawing file format, usable for preparation of required record document only, in whole to the Project General Contractor.
 - 4. Project Manual: The Project Manual is available in electronic form as a PDF document only in whole to the Project General Contractor.
- C. Availability: The availability of the Architect/Engineer of Record's Drawings on electronic media is a goodwill offering only to the extent and in the format available and standard with the Architect/Engineer of Record and cannot be relied upon by any party.
- D. The Project General Contractor is wholly responsible for distribution to all other parties to Construction Contracts. The Architect/Engineer of Record will not subdivide the electronic media or distribute to any party other than the Project General Contractor.

1.2 PROCEDURE

- A. Contact the Architect/Engineer of Record's Project Manager with the request.
- B. Transmit two (2) fully executed copies of the "Electronic Transfer of Data from Architect/Engineer of Record" attached hereto along with a check for the amount required.
- C. Upon receipt of the signed "Electronic Transfer of Data from Architect/Engineer of Record" and payment in full, the Architect/Engineer of Record will transfer the data in the form compatible with the Architect/Engineer of Record's standard practice within two (2) weeks.

END OF SECTION 01301

NOT FOR BIDDING

ELECTRONIC TRANSFER OF DATA FROM ENGINEER

Read this Agreement before accessing transferred computer files. By, opening or copying these files you accept the terms of this Agreement.

Transferred data files consist of drawings, text, or a combination of both, hereinafter collectively identified as "Documents". The Documents are in an electronic format that may be accessed using compatible applications software. The documents may be contained on floppy diskettes, CD-ROMs or other physical media, or they may have been sent to you via a modem or dedicated electronic communications connection.

These Documents have been prepared by Century Engineering, Inc. (CEI) for a purpose related to a specific Project. The Documents are instruments of CEI'S service for use solely with respect to that Project. CEI shall be deemed the author of these documents and shall retain all common law, statutory and other property rights, including the copyright. CEI licenses you to use these documents exclusively within the terms set forth within this Agreement.

1 LICENSE

1.1 YOU ARE PERMITTED TO

Use these documents for information and reference for this Project as follows:

- Clients of CEI: In connection with your use and occupancy of this Project.
- Individuals and firms performing professional services in connection with this Project, as consultants to CEI or to the Owner of the Project: For your design, documentation and calculations related to this Project.
- Individuals and firms performing services in connection with this Project, as contractors or subcontractors: for activities necessary for the construction of the project in accordance with requirements of the contract documents.
- Produce "hard copy" reproductions of the documents in the form of prints or plots for the limited purposes defined above.
- Overlay the documents with information related to the project.
- Use these documents for another purpose expressly defined in a separate, written agreement, signed by both yourself and an authorized representative of CEI.

1.2 YOU ARE NOT PERMITTED TO

- Use these documents, or permit these documents to be used, on other projects, for additions to this Project, or for completion of this Project by others.
- Remove the "Conditions of Use - Summary" notice, if any, that appears on the documents.
- Modify the documents with regard to information related to the Project's construction.
- Modify the documents in any manner that might lead an observer of the modified documents to incorrectly attribute contents, as modified, to CEI. Modifications that you make to the documents shall include notations identifying the entity making the change and the date of such change in each instance.

2 TERM

2.1 This license is effective until you terminate it by destroying the electronic data files together with all copies thereof. It shall also terminate if you fail to abide by this Agreement. Upon termination, you agree to destroy all copies of the data, including copies stored on the hard disk or network of any computer system under your control.

3 GENERAL PROVISIONS

3.1 In accepting these documents, you acknowledge that you understand and agree to the following:

- The versions of these documents that have been or will be filed with the governing authority having legal jurisdiction over the Project shall take precedence over your copy of the documents with respect to considerations of compliance with applicable Codes and Ordinances. –
- These documents are current to the date and time of their electronic transfer. Subsequent modifications to the documents, as they may be further implemented by CEI for various purposes, may result in inconsistencies between these documents and those on file in CEI'S offices.
- These documents may contain information initially produced within a computer program different from the one that you intend to use to access the information, and that, as a result, CEI cannot guarantee either the accuracy or completeness of the information when you receive it.
- While CEI consistently strives to detect and remove computer viruses from its computer systems, such viruses could nevertheless accompany your electronic files, which could in turn infect and cause corruption of other programs and data on computer systems used to read or store these data.
- The electronic record has been issued for informational and reference purposes only, and does not necessarily represent a final or approved plan product. Users of this digital information must check and verify its agreement and compliance with the final drawings.
- Locations of specific elements in the file may not be in the intended location for construction. The location of those elements may be modified by dimensions on the plan, setback lines, revised architectural or plumbing plans, etc. The user shall verify these elements to the users satisfaction.

3.2 CEI shall in no event be liable for direct, indirect, special, incidental, contingent, or consequential damages resulting from any defect in the electronic media or with any information in the electronic documents contained therein, including damages from loss of data, downtime, goodwill, damage to or replacement of equipment or property, costs of recovering, reprogramming or reproducing any programs or data in conjunction with the issuance of these documents.

3.3 CEI shall have no obligation to provide revisions, updates or corrections to this file. This file may be revised by CEI without notice. The user of this file shall have the responsibility of determining if subsequent revisions are necessary or relevant for the users purpose.

4 RECOURSE & INDEMNIFICATION

4.1 You are responsible for any non-compliance by any member of your organization, including employees. If you or any of your employees breeches or threatens to breach the obligations herein, CEI will have the right, in addition to such other remedies which may be available to it, to injunctive relief enjoining such acts or attempts, it being agreed that damages are not adequate remedy.

4.2 In the event that any provision of this Agreement is violated, you agree to assume all risks associated therewith, and, to the fullest extent permitted by law, to indemnify, hold harmless and defend CEI from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorneys' fees, arising therefrom or in connection therewith.

5 LAW

5.1 This Agreement shall be governed by the laws of the State of Delaware, USA.

END OF SECTION 01301

1 GENERAL

1.1 SUMMARY

- A. Project Coordinator: The Project General Contractor shall provide a full time Superintendent at the site whenever any work is taking place. Such Superintendent shall be experienced in all aspects of construction. The Superintendent shall be the Project Coordinator.
- B. Authority of Project Coordinator: Designated to perform the duties listed.

1.2 DUTIES OF PROJECT COORDINATOR

- A. Coordinate Work of the Subcontractors.
- B. Establish on-site lines of authority and communication, schedule and conduct project meetings with involved Subcontractors.
- C. Construction Schedule:
 - 1. Coordinate schedules of the Subcontractors.
 - 2. Monitor schedules of Subcontractors as Work progresses:
 - a.) Identify potential variances between scheduled and probable completion dates.
 - b.) Adjust Subcontractors' schedules to meet required completion date.
 - c.) Document all changes in schedule.
 - 3. Supervise Work of Subcontractors to ensure compliance with schedule.
 - a.) Verify that labor and equipment are adequate for the Work and the schedule.
 - b.) Verify that product deliveries are adequate to maintain schedule.
- D. Temporary Facilities:
 - 1. Allocate space for temporary structures furnished by each Subcontractor, if required.
 - 2. Monitor use of temporary facilities.
 - 3. Verify that adequate services are provided to comply with specification requirements.
 - 4. Verify proper maintenance and operation of temporary facilities.
 - 5. Administer traffic and parking controls.
- E. Document Maintenance
 - 1. Maintain a complete set of the Contract Documents at the Project Site.
 - 2. Maintain a complete set of Submittal Documents at the Project Site.
 - 3. Maintain a complete set of As-Built Documents at the Project Site.
- F. Interpretations of Contract Documents:
 - 1. Consult with Architect/Engineer to obtain interpretations.
 - 2. Assist in resolution of questions which may arise.
 - 3. Transmit written interpretations to concerned parties.
- G. Supervision of Subcontractors:

1. Supervise the Work of Subcontractors to ensure compliance with Contract Documents.
2. Reject Work of Subcontractors that does not comply with Contract Documents and requires re-execution for such compliance.

1.3 MECHANICAL-ELECTRICAL-WORK COORDINATION

- A. Coordinate the Work of the Mechanical and Electrical Subcontractors.
- B. Coordinate the schedules of Mechanical and Electrical Subcontractors.
- C. Conduct conferences among Mechanical and Electrical Subcontractors, and other concerned parties, as necessary to maintain coordination and schedules and resolve matters in dispute.
 1. Coordinate installation, operation and maintenance, to verify compliance with Project requirements and with Contract Documents.
- D. Shop Drawings, Product Data and Samples:
 1. Prior to submittal, review for compliance with Contract Documents.
 - a.) Check field dimensions and clearance dimensions.
 - b.) Check relation to available space.
 - c.) Check anchor bolt settings.
 - d.) Review the effect of any changes on the Work of other contracts or trades.
 - e.) Check compatibility with equipment and Work of other trades.
 - f.) Check motor voltages and control characteristics.
 - g.) Coordinate controls and interlocks:
 - 1.) Voltages.
 - 2.) Wiring of pneumatic electric switches or relays.
 - h.) Coordinate wiring and control diagrams.
- E. Coordination Drawings:
 1. Prepare, as required to assure coordination of Work of, or affected by, mechanical and electrical work, or to resolve conflicts.
 2. Reproduce and distribute approved copies to all concerned parties.
- F. Observe required testing.
- G. Observe Mechanical and Electrical Work for compliance with requirements of Contract Documents.
- H. Assemble Record Documents from Subcontractors.

1.4 EACH SUBCONTRACTOR'S DUTIES

- A. Coordinate Work of employees and Subcontractors under the Contract.
- B. Conduct Work to assure compliance with schedules.
- C. Transmit written instructions to concerned suppliers and Subcontractors.
- D. Under the administration of Project Coordinator, coordinate Work with that of other Subcontractors.

- E. Cooperate with Project Coordinator.

1.5 PROJECT MEETINGS

- A. The Project Coordinator shall attend all scheduled progress meetings that are directed by the Architect/Engineer of Record.
- B. The Project Coordinator shall schedule Subcontractors' representatives to attend all scheduled progress meetings that are directed by the Architect/Engineer of Record.
- C. The Project Coordinator shall hold any additional construction progress meetings that he determines are necessary to meet the Project requirements. All involved Subcontractors shall be required to attend.
- D. All matters of coordination, scheduling and clarification shall be discussed.

END OF SECTION 01311

1 GENERAL

1.1 SUMMARY

- A. Section includes: Requirements for Coordination Drawings.

1.2 SUBMITTALS

- A. Final Coordination Drawings:
1. Submit copies (in electronic form requested by Architect/Engineer of Record) of final coordination drawings for Owner's record only.
 2. Coordination Drawings are in addition to and not a substitution for trade shop drawings.

NOTE: INCLUDE JOB SITE CONDITIONS ON ALL REMODELING PROJECTS.

1.3 JOB SITE CONDITIONS

- A. Initial Inspection Tour.
1. Each trade whose Work is to be incorporated above ceilings, in open-overhead spaces or in shafts shall meet at the site and at times directed by the Project General Contractor at the convenience of the Owner.
 2. The Project General Contractor shall conduct a tour of all spaces affected by the Work of any trade to investigate the existing conditions which may be encountered and compare the Drawings with actual conditions.

1.4 GENERAL

- A. Drawings are necessarily diagrammatic and do not represent the precise sizes and locations of all elements of mechanical and electrical systems.
- B. The General Contractor is responsible for the coordination of all mechanical and electrical trades to ensure access for maintenance of installed systems within allocated space accounting for floor slab thickness, structural elements, including fireproofing, existing mechanical and electrical systems, ceiling height, space requirements, and layout.
- C. Each trade is responsible for laying out and installing systems in cooperation and coordination with all other trades to ensure orderly progress of the Work and successfully operating, maintainable systems, including adjustments in assumed location, as part of the Contract.

1.5 COORDINATION DRAWINGS

- A. Each trade shall prepare preliminary layout shop drawings at the scale of floor plans or as directed by the Project General Contractor and critical and typical cross sections at a scale directed by the Project General Contractor in transparency form.
- B. Each trade shall attend a coordination meeting at a time directed by the Project General Contractor.

- C. The Drawings shall be overlaid to demonstrate clearances and adjustments shall be made to accommodate the Work or other trades where necessary.
- D. After adjustments are made to the preliminary shop drawings, the Project General Contractor shall convene a final coordination drawing review meeting to ensure all interferences are eliminated.
- E. Additional such meetings shall be held until all interferences have been resolved after which shop drawings may be finalized.
- F. The Project General Contractor shall prepare composite coordination drawings and distribute to each trade.

END OF SECTION 01312

1 GENERAL

1.1 SUMMARY

- A. Section includes administrative and procedural requirements for project meetings, including, but not limited to, the following:
 - 1. Preconstruction conferences.
 - 2. Preinstallation conference.
 - 3. Progress meetings.
- B. Responsibility: Project General Contractor

1.2 PRECONSTRUCTION CONFERENCE

- A. Coordinate a preconstruction conference before starting construction, at a time scheduled by the Architect/Engineer of Record. Hold the conference at the Project Site or another location convenient for owner. Conduct the meeting to review responsibilities and personnel assignments.
- B. Attendees: Authorized representatives of the Owner, Architect/Engineer of Record, and their consultants; the Project General Contractor's project manager and it's superintendent; major subcontractors; manufacturers; suppliers; and other concerned parties shall attend the conference. All participants at the conference shall be familiar with the Project and authorized to conclude matters relating to the Work.
- C. Agenda: Discuss items of significance that could affect progress, including the following:
 - 1. Tentative construction schedule.
 - 2. Critical work sequencing.
 - 3. Designation of responsible personnel.
 - 4. Procedures for processing field decisions and Change Orders.
 - 5. Procedures for processing Applications for Payment.
 - 6. Distribution of Contract Documents.
 - 7. Submittal of Shop Drawings, Product Data, and Samples.
 - 8. Preparation of record documents.
 - 9. Use of the premises.
 - 10. Parking availability.
 - 11. Office, work, and storage areas.
 - 12. Equipment deliveries and priorities.
 - 13. Safety procedures.
 - 14. First aid.
 - 15. Security.
 - 16. Housekeeping
 - 17. Working hours.

1.3 PREINSTALLATION CONFERENCES

- A. Coordination with other construction.
- B. Attendees: The Installer and representatives of manufacturers and fabricators involved in or affected by the installation, and its coordination or integration with other materials and installations that have preceded or will follow, shall attend the meeting. Advise the Architect/Engineer of Record of scheduled meeting dates.
 - 1. Review the progress of other construction activities and preparations for the particular activity under consideration at each preinstallation conference, including requirements for the following:
 - a.) Contract Documents.
 - b.) Options.
 - c.) Related Change Orders.
 - d.) Purchases.
 - e.) Deliveries.
 - f.) Shop Drawings, Product Data, and quality-control samples.
 - g.) Review of mockups.
 - h.) Possible conflicts.
 - i.) Compatibility problems.
 - j.) Time schedules.
 - k.) Weather limitations.
 - l.) Manufacturer's recommendations.
 - m.) Warranty requirements.
 - n.) Compatibility of materials.
 - o.) Acceptability of substrates.
 - p.) Temporary facilities.
 - q.) Space and access limitations.
 - r.) Governing regulations.
 - s.) Safety.
 - t.) Inspecting and testing requirements.
 - u.) Required performance results.
 - v.) Recording requirements.
 - w.) Protection.
 - 2. Record significant discussions and agreements and disagreements of each conference, and the approved schedule. Promptly distribute the record of the meeting to everyone concerned, including the Owner and the Architect.
 - 3. Do not proceed with the installation if the conference cannot be successfully concluded. Initiate whatever actions are necessary to resolve impediments to performance of Work and reconvene the conference at the earliest feasible date.

1.4 PROGRESS MEETINGS

- A. Schedule progress meetings at the Project Site. Scheduled progress meetings will be conducted by the Architect/Engineer of Record. Coordinate dates of meetings with preparation of the payment application request.
- B. Attendees: In addition to representatives of the Owner and the Architect/Engineer of Record, each subcontractor, supplier, or other entity concerned with current progress or involved in planning, coordination, or performance of future activities

shall be represented at these meetings. All participants at the conference shall be familiar with the Project and authorized to conclude matters relating to the Work.

- C. Agenda: Review and correct or approve minutes of the previous progress meeting. Review other items of significance that could affect progress. Include topics for discussion as appropriate to the status of the Project
1. Project General Contractor's Construction Schedule: Review progress since the last meeting. Determine where each activity is in relation to the Project General Contractor's Construction Schedule, whether on time or ahead or behind schedule. Determine how construction behind schedule will be expedited; secure commitments from parties involved to do so. Discuss whether schedule revisions are required to insure that current and subsequent activities will be completed within the Contract Time.
 2. Review the present and future needs of each entity present, including the following:
 - a.) Interface requirements.
 - b.) Time.
 - c.) Sequences.
 - d.) Status of submittals.
 - e.) Deliveries.
 - f.) Off-site fabrication problems
 - g.) Access.
 - h.) Site utilization.
 - i.) Temporary facilities and services.
 - j.) Hours of work.
 - k.) Hazards and risks.
 - l.) Housekeeping.
 - m.) Quality and work standards.
 - n.) Change Orders.
 - o.) Documentation of information for payment requests.
- D. Reporting: The Architect/Engineer of Record will prepare and distribute the progress meeting minutes. No later than five (5) days after each progress meeting, the Project General Contractor shall revise the Construction Schedule where revisions to the schedule have been made or recognized and issue the revised schedule to the Architect/Engineer of Record and all Project Subcontractors and pertinent material suppliers.

END OF SECTION 01313

1 GENERAL

1.01 REQUIREMENTS INCLUDED

- A. General Quality Control.
- B. Workmanship.
- C. Manufacturer's Instructions.
- D. Manufacturer's Certificates.
- E. Mock-ups.
- F. Manufacturers' Field Services.
- G. Testing Laboratory Services.

1.02 RELATED REQUIREMENTS

- A. Section 00800 - General Conditions: Inspection and testing required by governing authorities.

1.03 QUALITY CONTROL, GENERAL

- A. Maintain quality control over suppliers, manufacturers, products, services, site conditions, and workmanship, to produce work of specified quality.

1.04 WORKMANSHIP

- A. Comply with industry standards except when more restrictive tolerances or specified requirements indicate more rigid standards or more precise workmanship.
- B. Perform work by persons qualified to produce workmanship of specified quality.
- C. Secure products in place with positive anchorage devices designed and sized to withstand stresses, vibration, and racking.

1.05 MANUFACTURER'S INSTRUCTIONS

- A. Comply with instructions in full detail, including each step in sequence. Should instructions conflict with contract documents, request clarification from architect before proceeding.

1.06 MANUFACTURERS' CERTIFICATES

- A. When required by individual specifications section, submit manufacturer's certificate, in duplicate, that products meet or exceed specified requirements.

1.07 MOCK-UPS

- A. When required by individual specifications section, erect complete, full-scale mockup of assembly at project site.

1.08 MANUFACTURERS' FIELD SERVICES

- A. When specified in respective specification sections, require manufacturer to provide qualified personnel to observe field conditions, conditions of surfaces and

installation, quality of workmanship, start-up of equipment, test, adjust and balance of equipment as applicable, and to make appropriate recommendations.

- B. Representative shall submit written report to owner listing observations and recommendations.

1.09 TESTING LABORATORY SERVICES

- A. Contractor shall employ and pay for services of an Independent Testing Laboratory to perform inspections, tests, and other services required by various specification sections.
- B. Services will be performed in accordance with requirements of governing authorities and with specified standards.
- C. Reports will be submitted to owner in triplicate giving observations and results of tests, indicating compliance or noncompliance with specified standards and with contract documents.
- D. Contractor shall cooperate with Testing Laboratory personnel; furnish tools, samples of materials, design mix, equipment, storage and assistance as requested.
 - 1. Notify owner and Testing Laboratory 24 hours prior to expected time for operations requiring testing services.
 - 2. Make arrangements with Testing Laboratory and pay for additional samples and tests for contractor's convenience.
- E. Any item found unsatisfactory by the testing agency shall be removed, replaced and retested at no additional cost to the Owner.

END OF SECTION 01400

1 GENERAL

1.1 SECTION INCLUDES

- A. Selection and payment.
- B. Project General Contractor submittals.
- C. Agency responsibilities.
- D. Agency reports.
- E. Limits on testing authority.
- F. Project General Contractor responsibilities.
- G. Schedule of tests.

1.2 RELATED SECTIONS

- A. Project General Conditions: Testing and approvals required by public authorities.
- B. Section 01400 – Quality Control: Manufacturer's certificates.
- C. Section 01720 - Project Record Documents.

1.3 REFERENCES

- A. ASTM C802 - Practice for Conducting an Interlaboratory Test Program to Determine the Precision of Test Methods for Construction.
- B. ASTM C1021 - Practice for Laboratories Engaged in the Testing of Building Sealants.
- C. ASTM C1077 - Practice for Laboratories Testing Concrete and Concrete Aggregates for Use in Construction and Criteria for Laboratory Evaluation.
- D. ASTM C1093 - Practice for Accreditation of Testing Agencies for Unit Masonry.
- E. ASTM D290 - Recommended Practice for Bituminous Mixing Plant Inspection.
- F. ASTM D3740 - Practice for Evaluation of Agencies Engaged in Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction.
- G. ASTM D4561 - Practice for Quality Control Systems for an Inspection and Testing Agency for Bituminous Paving Materials.
- H. ASTM E329 - Practice for Use in the Evaluation of Inspection and Testing Agencies as Used in Construction.

- I. ASTM E543 - Practice for Determining the Qualification of Nondestructive Testing Agencies.
- J. ASTM E548 - Practice for Preparation of Criteria for Use in the Evaluation of Testing Laboratories and Inspection Bodies.
- K. ASTM E699 - Practice for Criteria for Evaluation of Agencies Involved in Testing, Quality Assurance, and Evaluating Building Components in Accordance with Test Methods Promulgated by ASTM Committee E6.

1.4 SELECTION AND PAYMENT

- A. Employment and payment for services of an independent testing agency or laboratory to perform specified testing is to be completed by the Project General Contractor
- B. Employment of testing agency or laboratory in no way relieves Project General Contractor of obligation to perform Work in accordance with requirements of Contract Documents.

1.5 QUALITY ASSURANCE

- A. Comply with requirements of ASTM C802.
- B. Laboratory: Authorized to operate in State in which Project is located.
- C. Laboratory Staff: Maintain a full time registered Engineer or specialist on staff to review services.
- D. Testing Equipment: Calibrated at reasonable intervals with devices of an accuracy traceable to either National Bureau of Standards or accepted values of natural physical constants.

1.6 PROJECT GENERAL CONTRACTOR SUBMITTALS

- A. Prior to start of Work, submit testing laboratory name, address, and telephone number, and names of full time registered Engineer or specialist and responsible officer.
- B. Submit copy of report of laboratory facilities inspection made by Materials Reference Laboratory of National Bureau of Standards during most recent inspection, with memorandum of remedies of any deficiencies reported by the inspection.

1.7 AGENCY RESPONSIBILITIES

- A. Test compaction of backfill installed roadway products.
- B. Provide qualified personnel at site. Cooperate with Architect/Engineer of Record and the Project General Contractor in performance of services.
- C. Perform specified sampling and testing of Products in accordance with specified standards.

- D. Ascertain compliance of materials and mixes with requirements of Contract Documents.
- E. Promptly notify Architect/Engineer of Record and Project General Contractor of observed irregularities or non-conformance of Work or Products.
- F. Perform additional tests required by Architect/Engineer of Record.
- G. Attend preconstruction meetings and progress meetings if requested by the Project General Contractor.

1.8 AGENCY REPORTS

- A. After each test, promptly submit two copies of report to Architect/Engineer of Record and to Project General Contractor.
- B. Include:
 - 1. Date issued.
 - 2. Project title and number.
 - 3. Name of inspector.
 - 4. Date and time of sampling or inspection.
 - 5. Identification of product and specifications section.
 - 6. Location in the Project.
 - 7. Type of inspection or test.
 - 8. Date of test.
 - 9. Results of tests.
 - 10. Conformance with Contract Documents.
- C. When requested by Architect/Engineer of Record, provide interpretation of test results.

1.9 LIMITS ON TESTING AUTHORITY

- A. Agency or laboratory may not release, revoke, alter, or enlarge on requirements of Contract Documents.
- B. Agency or laboratory may not approve or accept any portion of the Work.
- C. Agency or laboratory may not assume any duties of Project General Contractor.
- D. Agency or laboratory has no authority to stop the Work.

1.10 CONTRACTOR RESPONSIBILITIES

- A. Cooperate with laboratory personnel, and provide access to the Work [and to manufacturers' facilities].
- B. Provide incidental labor and facilities:
 - 1. To provide access to Work to be tested.
 - 2. To facilitate tests.

- C. Notify Architect/Engineer of Record and laboratory 24 hours prior to expected time for operations requiring testing services.
- D. Employ services of an independent qualified testing laboratory and pay for additional samples and tests required by Project General Contractor beyond specified requirements.

1.11 SCHEDULE OF TESTS

- A. Refer to drawings for lab tested materials requirements.

END OF SECTION 01451

1 GENERAL

1.1 DEFINITIONS

- A. Substantial Enclosure: When the exterior walls are complete and the roof deck is complete for any portion of the building, the exterior openings shall be temporarily closed by the Project General Contractor, and temporary doors installed by the Project General Contractor; and the building, or portion thereof, shall be deemed to have reached "Substantial Enclosure."

1.2 TEMPORARY ELECTRICAL FACILITIES

- A. Requirements:
1. Service: Extend from existing systems at points designated by the Owner's representative.
 2. Temporary Lighting and Power: Provide all temporary light and power required to conduct the Work in accordance with all requirements of authorities having jurisdiction.
- B. As soon as the permanent power and lighting systems can be safely energized, they may be used for temporary light and power, subject to the following conditions:
1. Restore the systems to original condition as required to comply with the Specification requirements and warranty period, prior to substantial completion.
 2. Replace all lamps used for temporary lighting on or immediately prior to the Date of Substantial Completion.
- C. Responsibilities:
1. Electrical Subcontractors:
 - a.) Provide and maintain temporary light and power if needed.
 - b.) Remove temporary installations when no longer required.
 2. Each Involved Subcontractor and Each Contractor:
 - a.) Extend from the sources provided.
 - b.) Provide and pay all costs for all temporary power and lighting required before substantial completion.
 - c.) Reimburse Electrical Subcontractor for all costs for distribution, connection and increased service size and energy required in excess of that specified.
 3. Owner:
 - a.) The Owner will pay for all energy consumed from his system.
 4. General Contractor:
 - a.) Shall arrange and pay for all energy and services required in excess of or differing from that made available by the Owner

1.3 TEMPORARY TELEPHONES

- A. Each Contractor shall arrange and pay for his telephone service as he deems necessary.

1.4 TEMPORARY TOILETS

- A. The Project General Contractor shall furnish, install and maintain chemical type temporary toilet facilities for all workmen in accordance with requirements of all authorities having jurisdiction. Toilets shall be placed at the time Work starts and maintained until such time as the Work is completed.

1.5 GRADES, LINES, LEVELS

- A. The Project General Contractor shall employ a licensed land surveyor to lay out Work and establish all lines and levels.
1. Establish lines and levels.
 2. Locate foundations on lot.
 3. Establish and maintain lines and levels, column center lines, base lines and bench marks.
 4. Lay out partition lines and buck centers on formwork and on rough floors for information of all trades.
- B. The Project General Contractor shall verify all grades, lines, levels and dimensions. Report to Architect/Engineer of Record any errors or inconsistencies discovered.
- C. The Mechanical and Electrical Trades shall be responsible for the layout of their Work based on the reference lines and bench marks established by the Project General Contractor. See Specification Section 01311 in reference to coordination of trades.

1.6 CLEANING DURING CONSTRUCTION

- A. Each Contractor and Subcontractor:
1. Conform to environmental protection requirements of authorities having jurisdiction.
 2. Handle materials in a controlled manner with as few handlings as possible; do not drop or throw materials from heights.
 3. Remove debris produced by the Work as it occurs to Container provided by the General Contractor.
 4. Maintain electrical closets, pipes and duct shafts, chases, furred spaces, and similar spaces, which are generally unfinished, free from rubbish, extraneous construction materials, dirt and dust.
- B. Project General Contractor:
1. Execute cleaning to ensure that building, grounds, and public properties are maintained free from accumulations of waste materials and rubbish.
 2. At reasonable intervals during progress of Work, clean site and public properties, and dispose of waste materials, debris and rubbish.
 3. Provide on-site containers for collection of waste materials, debris and rubbish.
 4. To the maximum extent possible, institute a recycling program utilizing separate containers for each recyclable material such as steel, wood, gypsum products, paper and cardboard; each container clearly marked for use by all trades. Police the use of proper containers by all trades and re-sort on a regular basis as required.

5. Remove waste materials, debris and rubbish from site and legally dispose of off Owner's property at the Project General Contractor's expense.
6. Vacuum clean interior building areas when ready to receive finish painting and continue vacuum cleaning on an as-needed basis until building is ready for Substantial Completion or Occupancy. Schedule cleaning operations so that dust and other contaminants resulting from cleaning process will not fall on wet, newly painted surfaces.

1.7 MAINTENANCE OF TRAFFIC

- A. Maintain traffic control on all streets adjacent to or leading to the site. Where construction operations interfere with the free movement of traffic, provide traffic controls, flagmen or similar devices to efficiently control traffic movement. Conform to requirements of authorities having jurisdiction.
- B. Observe regulations regarding load limits, speed limits, traffic restrictions, parking and maintenance of roadways. Obtain required special permits.

1.8 CONSTRUCTION SIGNS

- A. The Project General Contractor shall provide one (1) construction signs erected where directed by the Architect/Engineer of Record, maintained in good order and removed and legally disposed of by the Project General Contractor when directed by the Architect/Engineer of Record.
- B. The Architect/Engineer of Record will advise the Project General Contractor as to the allowable size of the sign.
- C. Sign shall be painted on all surfaces and edges with one (1) coat P & L Permiled Exterior Primer and two (2) separate and full coats of P & L Effecto Enamel. Background colors shall meet at a sharp, clean line, perpendicular at top and bottom edges of sign panel.
- D. Sign shall be lettered with the name of the Project, Owner, Architect/Engineer of Record, General Contractor and major subcontractors as directed by the Architect/Engineer of Record.
- E. All lettering and graphics shall be 3M Scotch Lite All-Weather Matte Vinyl, pre-spaced, back-adhesive or equal.

1.9 TEMPORARY PROTECTION

- A. Each Trade shall provide temporary measures necessary to carry on the Work.
- B. The Project General Contractor shall provide protection of materials stored at the site and shall be responsible for losses.
- C. The Project General Contractor shall provide and maintain protection of existing construction and Work in place, including that of other Contractors, against damage from construction operations and shall be responsible for repair or replacement of Work so damaged.

- D. The (General) Contractor shall provide protection from the weather of Work in place which is not within enclosed areas.
- E. The (General) Contractor shall be responsible for safeguarding all Work in place during the construction period and he shall be responsible for all losses.
- F. The Project General Contractor shall be responsible for all glass during the construction period.
- G. The Project General Contractor shall provide protection required to keep unauthorized persons out of the Work Area.

1.10 TEMPORARY FIELD OFFICE

- A. The Project General Contractor shall be provided with temporary office space within the existing building. The Project General Contractor will equip the space with plan table, conference table and chairs, fax machine, plan files, and an enclosed file space.

1.11 TEMPORARY STORAGE

- A. The (General) Contractor shall provide and maintain suitable, slightly, weathertight sheds or trailers in approved exterior locations for storage as required, at their own risk.
- B. Temporary structures shall be of uniform design and appearance, neatly constructed, painted on exterior, and approved as to appearance and type of construction.
- C. Should it be necessary at any time to move materials, sheds, or storage platforms, move same as and when directed, without extra cost to Owner.

1.12 TEMPORARY FENCE

- A. As a minimum, provide a seven (7) foot high chain link fence around the construction area complete with adequate gates.
- B. Such fence shall be the minimum required to separate the construction area; however, such fence shall not release the contractor of his sole responsibility to keep unauthorized people out of the construction area.

1.13 ENVIRONMENTAL AND POLLUTION CONTROLS

- A. Conform to the requirements of authorities having jurisdiction with regard to environmental protection including lead, asbestos, PCB's, air, water, erosion, vibration and noise.

1.14 REMOVAL OF TEMPORARY CONSTRUCTION

- A. At completion of Work, all temporary construction and facilities shall be removed from structures and premises by the party providing same under the ultimate control of the Project General Contractor.

END OF SECTION 01500

1 GENERAL

1.1 MATERIAL AND EQUIPMENT INCORPORATED INTO THE WORK

- A. Conform to applicable specifications and standards except as specified under the heading hazardous materials.
- B. Manufactured and Fabricated Products:
 - 1. Design, fabricate and assemble in accord with the best engineering and shop practices.
 - 2. Manufacture like parts of duplicate units to standard sizes and gages, to be interchangeable.
 - 3. Two or more items of the same kind shall be identical, by the same manufacturer.
 - 4. Provide products suitable for service conditions.
 - 5. Equipment capacities, sizes and dimensions shown or specified shall be adhered to unless variations are specifically approved.
- C. Do not use material or equipment for any purposes other than that for which it is designed or is specified.
- D. Hazardous Materials:
 - 1. The term "Hazardous Materials", shall include, but shall not be limited to asbestos containing materials and substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 et seq., Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1802, and the Resource Conservation Act and Recovery Act, 42 U.S.C. Sec. 6901 et seq.
 - 2. Do not use any hazardous waste, toxic substance or related materials ("Hazardous Materials"), in such manner as would violate any law, regulation or other government requirement or would cause damage or a risk of damage to the environment, or in such a manner as to leave any residue which could be hazardous to persons or property or cause liability to Owner.
 - 3. Immediately bring to the attention of the Architect/Engineer of Record, any required item which may fall under the above requirements.
 - 4. Notwithstanding Contract Documents to the otherwise, no asbestos containing materials shall be used in the Work.

1.2 REUSE OF EXISTING MATERIAL

- A. Except as specifically indicated or specified, materials and equipment removed from the existing structure shall not be used in the completed Work.
- B. For material and equipment specifically indicated or specified to be reused in the Work:
 - 1. Use special care in removal, handling, storage and reinstallation, to assure proper function in the completed Work.
 - 2. Arrange for transportation, storage and handling of products which require off-site storage, restoration or renovation. Pay all costs for such Work.

1.3 MANUFACTURER'S INSTRUCTIONS

- A. When Contract Documents require that installation of Work shall comply with manufacturer's printed instructions, obtain and distribute copies of such instructions to parties involved in the installation and until completion.
 - 1. Maintain one set of complete instructions at the job site during installation and until completion.
- B. Handle, install, connect, clean, condition and adjust products in strict accord with such instructions and in conformity with specified requirements.
- C. Perform Work in accordance with manufacturer's instructions. Do not omit any preparatory step or installation procedure unless specifically modified or exempted by Contract Documents unless otherwise approved in writing by Architect/Engineer of Record.

1.4 TRANSPORTATION AND HANDLING

- A. Arrange deliveries of Products in accord with construction schedules, coordinate to avoid conflict with Work and conditions at the site.
 - 1. Deliver products in undamaged condition, in manufacturer's original containers or packaging, with identifying labels intact and legible.
 - 2. Immediately on delivery, inspect shipments to assure compliance with requirements of Contract Documents and approved submittals, and to assure that Products are properly protected and undamaged.
 - 3. Handle Owner provided Products in accordance with instructions provided in Specification Section 01110.
- B. Provide equipment and personnel to handle Products by methods to prevent soiling or damage to Products or packaging.

1.5 STORAGE AND PROTECTION

- A. Store products in accord with manufacturer's instructions, with seals and labels intact and legible.
 - 1. Store products subject to damage by the elements in weathertight enclosures.
 - 2. Maintain temperature and humidity within the ranges required by manufacturer's instructions.
- B. Exterior Storage:
 - 1. Store fabricated products above the ground, on blocking or skids, prevent soiling or staining. Cover products which are subject to deterioration with impervious sheet coverings, provide adequate ventilation to avoid condensation.
 - 2. Store loose granular materials in a well-drained area on solid surfaces to prevent mixing with foreign matter.
- C. Protection After Installation:
 - 1. Provide substantial coverings as necessary to protect installed Products from damage from traffic and subsequent construction operations. Remove when no longer needed.

1.6 DUTIES IMPOSED BY STANDARD SPECIFICATIONS

- A. Where any Standard Specification which is incorporated in the Specifications by reference, through the words "and/or as directed by the Architect/Engineer of Record," or phrases having a similar effect appear to give the Architect/Engineer of Record the right to direct something other than that specified, the Architect/Engineer of Record has in fact no such right, except as it may be established in specific instances in portions of this Project Manual other than in said "Standard Specifications."

END OF SECTION 01610

1 GENERAL

1.01 REQUIREMENTS INCLUDED

- A. Maintain at the site for the owner one (1) record copy of:
 - 1. Drawings.
 - 2. Specifications.
 - 3. Addenda.
 - 4. Change Orders and other modifications to the Contract.
 - 5. Engineer field orders or written instructions.
 - 6. Approved shop drawings, product data and samples.
 - 7. Field test records.

1.02 MAINTENANCE OF DOCUMENTS AND SAMPLES

- A. Store documents and samples in Contractor's field office apart from documents used for construction.
- B. File documents and samples in accordance with CSI format.
- C. Maintain documents in a clean, dry, legible condition and in good order. Do not use record documents for construction purposes.
- D. Make documents and samples available at all times for inspection by owner's representative.

1.03 MARKING DEVICES

- A. Provide felt tip marking pens for recording information in the code designated by owner's representative.

1.04 RECORDING

- A. Label each document "PROJECT RECORD" in neat large printed letters.
- B. Record information concurrently with construction progress.
 - 1. Do not conceal any work until required information is recorded.
- C. Drawings: Legibly mark to record actual construction:
 - 1. Depths of various elements of foundation in relation to finish first floor datum.
 - 2. Horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
 - 3. Location of internal utilities and appurtenances concealed in the construction, referenced to visible and accessible features of the structure.

4. Field changes of dimension and detail.
 5. Changes made by Change Order.
 6. Details not on original contract drawings.
- D. Specifications and Addenda: Legibly mark each Section to record:
1. Manufacturer, trade name, catalog number, and supplier of each product and item of equipment actually installed.
 2. Changes made by Change Order.

1.05 SUBMITTAL

- A. Prior to contract close-out, contractor shall submit record documents as specified for owner's review and acceptance, contractor shall submit a set of reproducible sepias for Owner's use.
- B. Accompany submittal with transmittal letter in duplicate, containing:
1. Date.
 2. Project title and number.
 3. Contractor's name and address.
 4. Title and number of each record document.
 5. Signature of contractor or his authorized representative.

END OF SECTION 01720

1 GENERAL

1.1 SECTION INCLUDES

- A. Preparation and submittal of warranties.
- B. Time submittals.

1.2 RELATED SECTIONS

- A. Contract General Conditions
- B. Section 01700 - Contract Closeout: Contract closeout procedures.
- C. Individual Specifications Sections: Warranties required for specific Products or Work.

1.3 FORM OF SUBMITTALS

- A. Bind in commercial quality 8-1/2 x 11 inch binders with durable covers.
- B. Cover: Identify each binder with typed or printed title WARRANTIES with title of Project; name, address and telephone number of Contractor and equipment supplier; and name of responsible company principal.
- C. Table of Contents: Neatly typed, in the sequence of the Table of Contents of the Project Manual, with each item identified with the number and title of the specification section in which specified, and the name of Product or work item.
- D. Separate each warranty with index tab sheets keyed to the Table of Contents listing. Provide full information, using separate typed sheets as necessary. List Subcontractor, supplier, and manufacturer, with name, address, and telephone number of responsible principal.

1.4 PREPARATION OF SUBMITTALS

- A. Obtain warranties executed in duplicate by responsible Subcontractors, suppliers, and manufacturers. Except for items put into use with Owner's permission, leave date of beginning of time of warranty until the Date of Substantial Completion or the date of acceptance of specific Products, if those specific Products are not accepted at Substantial Completion, is determined.
- B. Verify that documents are in proper form, contain full information, and are notarized.
- C. Co-execute submittals when required.
- D. Retain warranties until time specified for submittal.

1.5 TIME OF SUBMITTALS

- A. For equipment or component parts of equipment put into service during construction with Owner's permission, submit documents within ten (10) days after acceptance.
- B. Make other submittals within ten (10) days after Date of Substantial Completion, prior to final Application for Payment.
- C. For items of Work for which acceptance is delayed beyond Date of Substantial Completion, submit within ten (10) days after acceptance, listing the date of acceptance as the beginning of the warranty period.

END OF SECTION 01740

1 GENERAL

1.1 SECTION INCLUDES

- A. Preparation and submittal of bonds.
- B. Time of submittals.

1.2 RELATED SECTIONS

- A. Section D - Instruction to Bidders: Bid bonds.
- B. Project General Conditions: Performance bond and labor and material payment bonds.
- C. Section 01700 - Contract Closeout: Contract closeout procedures.
- D. Individual Specifications Sections: Bonds required for specific Products or Work.

1.3 FORM OF SUBMITTALS

- A. Bind in commercial quality 8-1/2 x 11 inch binders with durable covers.
- B. Prepare bonds on forms provided with the Bidding Documents.

1.4 PREPARATION OF SUBMITTALS

- A. Prepare bonds in accordance with the instructions in the Bidding Documents, specifically Article 20 of the General Conditions..

1.5 TIME OF SUBMITTALS

- A. Bid bonds are to be submitted at the time and place of Bid and are to be included in the Bidding Documents..
- B. Performance and payment bonds are to be submitted within five (5) days of Notice of Award and prior to or concurrent with the execution of the Contract.

END OF SECTION 01741

1 GENERAL

1.1 PROJECT RECORD DOCUMENTS

- A. Throughout the progress of construction each Contractor shall keep a current, detailed record of all changes in the installation of the Work from the conditions, locations and layout shown on the Contract Drawings legibly marked in ink on a set of prints of the Contract Documents. This requirement does not authorize any deviations without approval of the Architect/Engineer.
- B. Near completion of the Project, the Construction Manager shall distribute a set of reproducible of the original Drawings and each contractor shall transfer all changes by drafting techniques neatly lettered and dimensioned. Such changes shall be circled and indicated as such. Each sheet shall be marked as "Record Drawings", signed and dated by each Contractor.
- C. Record Drawings shall be delivered to the Owner before final payment is made.

1.2 FINAL CLEANING

- A. Remove grease, dust, dirt, stains, labels, fingerprints and other foreign materials from sight-exposed existing and new interior and exterior finished surfaces, affected by construction operations.
- B. Repair, patch and touch-up marred surfaces to match adjacent surfaces to satisfaction of Owner.

1.3 SUBSTANTIAL COMPLETION

- A. The Substantial Completion inspection is intended to be conducted for the entire project, or specified phase of the work, at one time. Substantial Completion inspections for individual contractors are not intended to be conducted unless extenuating circumstances exist beyond the individual contractor's control.
- B. Should Architect/Engineer consider that Work is not substantially complete:
 - 1. Architect/Engineer shall immediately notify Contractor, in writing, stating reasons.
 - 2. Contractor: Complete Work and send second written notice to Architect/Engineer certifying the Project is substantially complete.
 - 3. Construction Manager and Architect will reinspect Work.
- C. Payment for Re-inspection:
 - 1. The Architect/Engineer will conduct one (1) preliminary review prior to Substantial Completion and One (1) Punchlist Inspection at Substantial Completion. The Owner will compensate the Architect/Engineer for additional inspections and deduct such compensation from the amount owned the Contractor.

1.4 FINAL COMPLETION

- A. Individual contractor's work may be completed at various times as the entire project nears completion. A Final Completion inspection is intended to be conducted at the completion of the entire project, or specified phase. Individual contractors who do not expeditiously complete their work may be subject to a delay in the final completion inspection being conducted and will be responsible for the cost of the inspection by the architect.
- B. The Architect/Engineer will conduct one (1) final inspection to verify that the punchlist of items to be completed or corrected is complete. The Owner will compensate the Architect/Engineer for additional inspections and deduct such compensation from the amount owed the Contractor.
- C. The Owner will compensate the Architect/Engineer for all services sixty (60) days after the date of Substantial Completion and deduct such compensation from the amount owed the Contractor.

1.5 CLOSEOUT SUBMITTALS

- A. Submit the following to the Construction Manager:
 - 1. Record Documents.
 - 2. Guarantees/Warranties.
 - 3. Spare Parts and Maintenance Materials, if specified.
 - 4. Evidence of compliance with requirements of governing authorities.

1.6 FINAL ADJUSTMENT OF ACCOUNTS

- A. Submit final statement of accounting to Architect.
- B. Statement shall reflect all adjustments.
 - 1. Original Contract Sum.
 - 2. Additions and deductions resulting from:
 - a) Previous Change Orders.
 - b) Allowances.
 - c) Other Adjustments.
 - d) Deductions for uncorrected Work.
 - e) Deductions for liquidated damages.
 - f) Deductions for Architect's additional services as directed by the Owner.
 - 3. Total Contract Sum, as adjusted.
 - 4. Previous payments.
 - 5. Sum remaining due.
- C. Construction Manager will prepare final Change Order, reflecting approved adjustments to Contract Sum not previously made by Change Orders.

1.7 FINAL APPLICATION FOR PAYMENT

- A. In order to facilitate approval of final payments, the Contractor and Construction Manager shall submit prior to the final application being submitted a joint certification that the following items have been completed: All work has been completed in accordance with the Contract Documents
 - 1. Record Drawings have been accepted by the Owner's Representative,

2. include a listing of the documents submitted to the Owner. Operations and Maintenance Data has been accepted by the Owner's Representative, include a listing of the documents submitted to the Owner.
 3. Copies of test reports and inspections have been submitted to and accepted by the Owner's Representative and Architect, include a listing of the documents submitted.
 4. Individual manufacturer's warranties required by specific specification sections have been submitted in accordance with the Contract Documents, include a listing of the documents submitted.
 5. The Contractor's correction period of two years as specified in the Contract Documents commences from the date of final completion (modifications to the Contract Documents regarding this item will be unacceptable and will delay final payment).
 6. Insurance requirements of the Contract Documents have been met.
 7. Final statement of accounting for all changes is attached and all Change Orders have been fully executed and distributed.
 8. The following closeout documents have been submitted to the Owner:
 - a) AIA G706 – Contractor Affidavit of Payment of Debts and Claims
 - b) AIA G706A – Contractor's Affidavit of Release of Liens
 - c) AIA G707 – Consent of Surety to Final Payment
- B. Contractor and Construction Manager shall submit final application in accordance with requirements of "General Conditions."
- C. Final Payment will not be certified by the Architect until the above closeout certification is satisfactorily completed.

1.8 FINAL CERTIFICATE FOR PAYMENT

- A. Architect will issue final certificate in accordance with provisions of "General Conditions."

END OF SECTION 01771