

AIA Document A201 - 2017

Draft General Conditions of the Contract for Construction as
amended by the Owner

New Southeast Elementary

49 pages

DRAFT AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

(Current Version as of 4-11-2018)

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

« Name of Project »
« Address »
City, State Zip »

THE OWNER:
(Name, legal status and address)

« Poudre School District R-1 »« »
« 2407 LaPorte Avenue »
Fort Collins, CO 80521 »

THE ARCHITECT:
(Name, legal status and address)

« Firm Name »« »
« Address »
City, State Zip »

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

The Contract Documents **as defined in Section 1.1.1** form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor **except to the extent that a Subcontractor or Sub-subcontractor shall be contractually obligated for the warranties described in Section 3.5.1.**

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

§ 1.2.4 In the event the Contractor discovers an error in the Drawings, or a conflict between the Drawings and Specifications, the Contractor shall bring such error or conflict to the attention of the Architect as soon as reasonably possible. The Contractor shall await the Architect's prompt instructions on how to proceed before proceeding with this work. Where a conflict occurs between or within standards, Specifications and Drawings, the more stringent or higher quality requirements shall apply. Addenda and modifications to the Drawings and Specifications take precedence over the original Contract Documents. Should there be a conflict within the Specifications, or the Drawings, or between the Specifications and the Drawings, the Owner shall decide which stipulation will provide the best installation and the Owner's decision shall be final.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of rights in or to the Instruments of Service.

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

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building

Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the Poudre School District R-1, Fort Collins Colorado, identified as such in the Agreement and is referred to throughout the Contract Documents as "Owner" or as the "District". The terms "Owner" or "District" shall include the Owner's Project Manager who shall have the authority to act for the Owner on the Project within District Policies and Regulations.

§ 2.2 Evidence of the Owner's Financial Arrangements

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

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents. Notwithstanding any provision of this Section 2.2.2, no change order shall be executed which increases the amount payable under the Contract without funds being appropriated therefor, or the Contractor has otherwise been given written assurances that lawful appropriations to cover the extra costs have been made.

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

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

§ 2.3 Information and Services Required of the Owner

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

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

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

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

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. **If the Contractor becomes aware of any deficiency, inaccuracy or incompleteness of services and information furnished by Owner under this Subsection 2.3.5, the Contractor shall promptly advise the Owner in writing of such inaccuracy or incompleteness.**

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. **Nothing herein shall in any way limit the Owner's legal right to revoke acceptance of the Work at a later time, in accordance with applicable law.**

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.1.4 The Contractor shall comply with all applicable federal labor and state labor laws including without limitation those addressing employer obligations for publicly funded projects.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. **If the Contractor performs any construction activity knowing it involves an error, inconsistency or omission in the Contract Documents without providing notice of such error, inconsistency or omission to the Architect, the Contractor shall assume responsibility for such construction activity and shall bear the costs attributable to any necessary correction.**

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall, **upon written request of the Owner, correct such failure(s) without adjustment to the Contract Sum. In the event a correction that will make the Owner whole is not possible, then the Contractor shall** pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

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

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 CONTRACTOR'S WARRANTIES AND CORRECTION OF WORK

§ 3.5.1 The Contractor warrants that all parts, materials, components, equipment and other items used to perform the Work shall be new (unless otherwise specified) and suitable for the purpose used and will be of good quality, free from faults and defects and all Work will be free from defects and in conformance with the Contract Documents. The Contractor also warrants that its workers will be sufficiently skilled to produce the highest quality of work, which is free from faults and defects. Work not so conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor shall, when requested, furnish the Owner with satisfactory evidence as to the kind and quality of materials and equipment. The Contractor further warrants that the construction processes and methods employed to perform the work shall be suitable for the results required and expected. If the Contractor proposes to use an unproved and untried method, process or product, the Architect must be advised of the proposal in writing for purposes of discussion with the Owner. The Owner may permit experimentation, but may require special guarantees of the Contractor to cover the work produced by any new and untried process, method or product.

§ 3.5.2 The Contractor further warrants that it has full title to all equipment, components and other items conveyed to the Owner under the terms of this Contract, that its transfer of such title to the Owner is rightful and that all such equipment, components and other items shall be transferred free and clear from all security interest, liens or encumbrances whatsoever. The Contractor agrees to warrant and defend such title against all persons claiming the whole or any part thereof at no cost to the Owner.

§ 3.5.3 The Contractor shall promptly repair, replace or otherwise correct any of its workmanship and any parts, materials, components, equipment or other items in the work which contain faults or defects, whether such failures are observed by the Owner, Architect or Contractor before or after Final Completion. The Contractor shall bear all costs of correcting such work covered by the warranties.

§ 3.5.4 The Contractor shall further warrant, and shall ensure that all of its Subcontractors and Sub-subcontractors shall warrant, that all Work executed under this contract shall be free from defects of materials and workmanship for a period of one (1) year from the date of Substantial Completion, except items of Work completed after date of Substantial Completion shall run for one year from the date of final payment to the Contractor. This warranty is a remedy available to the Owner in addition to claims the Owner may have arising out of Work or materials found to be noncomplying, out of specification or otherwise in breach of this Contract no matter when discovered. The above parties further agree they will, at their own expense, repair and replace all such defective work and all other work damaged thereby which become defective during the one year warranty period.. Whenever guarantees or warranties are required by the Specifications for a longer period than one (1) year, such period shall govern. Owner shall have the full benefit of longer warranties provided by particular Subcontractors or other suppliers.

Upon discovery of any warranty defect or defects under Section 3.5.4, the Owner shall give written notice thereof to the Contractor. If, within ten (10) days after the mailing of such written notice by the Owner to the Contractor or its agent, requesting such repairs or replacement, the Contractor shall neglect to make, or undertake with due diligence to make the same, the Owner may make such repairs at the Contractor's expense; provided, however, that in the case of emergency and within the judgment of the Owner, delay would cause certain loss or damage, repairs or replacement may be made

without notice being given to the Contractor, and the Contractor shall pay the cost thereof.

The checking or cracking of walls, floors or ceilings, except hairline cracks from concrete shrinking which are cosmetic only, and the chipping or flaking of paint shall, during the first year after acceptance of the building, be deemed to be a defect covered by this warranty without proof of use of inferior materials, equipment or workmanship. Such defects shall not, in and of themselves, cause a duty to investigate for structural defects.

§ 3.5.5 Nothing herein shall be construed to establish a period of limitation with respect to any other obligation, which the Contractor might have under the Contract Documents. The establishment of the warranty periods set forth in Section 3.5.4 relates only to the specific obligations of the Contractor to correct known defects in the Work, and has no relationship to the time within which its obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations and resulting damages other than specifically to correct known defects in the Work which are discovered and called to the Contractor's attention during the warranty period.

§ 3.5.6 The Contractor at its own expense shall also repair or replace any damages to any equipment, facilities or other personal or real property owned or leased by the Owner which is damaged as a result of any such fault or defect, at no cost to the Owner.

§ 3.5.7 All Subcontractors', manufacturers' and suppliers' warranties and guarantees, expressed or implied, for any part of the Work and any materials used therein, shall be obtained and enforced by the Contractor for the benefit of the Owner whether or not these warranties have been assigned or otherwise transferred to the Owner. The Contractor shall assign or transfer such warranties and guarantees to the Owner if the Owner requests the Contractor to do so, but such transfer shall not affect the Contractor's obligation to enforce such warranties and guarantees.

§ 3.5.8 Remedies for breach of warranty are cumulative and in addition to any other remedy Owner may have for defective work or work not in compliance with the Contract Documents.

§ 3.5.9 The warranties and obligations set forth above shall not be limited by the provisions of § 12.2.

§ 3.6 Taxes

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Owner is exempt from Colorado State Sales and Use Taxes on materials and equipment to be incorporated into the Work. Said taxes on materials incorporated into the work, or upon equipment or supplies expended and/or used to exhaustion in the course of the work, shall not be included in the contract price or modifications to the same. The following are all applicable tax identification and exemption numbers:

Federal Tax ID#
84-6013733

State Tax ID#
03-27342

State Tax Exempt #
98-03335

State Motor Fuel Exempt #
16-19647

§ 3.6.2 All Contractors and Subcontractors performing work on the Project shall apply to the State of Colorado Department of Revenue for a Tax Exemption Certificate. All Contractors are to have their own tax exemption number to cover the purchase of materials provided to this job. Contractors and Subcontractors shall apply for the Tax Exemption Certificate using Form DR 172 (Rev. 9/06) or its most current version. This form may be obtained from the State of Colorado Department of Revenue. Contractors and Subcontractors shall submit their Tax Exemption Certificate numbers to the Owner prior to beginning any work. The Contract shall be exclusive of state, county and municipal sales and use taxes.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 The Architect will apply to the Colorado Division of Fire Prevention & Control - Department of Fire Safety, for the plan review and Building Permit, and distribute the permit to the Owner and Contractor. The Owner shall pay for the plan review, Building Permit, and third-party inspections required by the Department of Fire Safety.

The Contractors shall pay for all other required inspections, permits, licenses, and fees. The Contractor shall call for all inspections required by applicable authorities.

Assessments against the property are the obligation of the Owner and will be paid by the Owner as necessary to assure issuance of permits specified above. This includes sewer and water charges for capital improvements and line extensions, including plant investment fees and connections charges based on the cost of mains serving the site.

The following fees shall be paid by the Owner if applicable to the Work:

1. Water plant investment fee and water tap fee.
2. Sewer plant investment fee, sewer reimbursement charge, and sewer tap fee.
3. Any and all fees related to bringing permanent electrical services to the transformer including transformer pad.
4. Storm drainage fee.
5. Any and all fees related to bringing permanent natural gas service to the meter location.

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

§ 3.7.2.1 Preference in employment of Colorado labor. The Contractor shall comply with C.R.S. § 8-17-101 which states: *"Whenever any public works financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado are undertaken in this state, Colorado labor shall be employed to perform the work to the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed on such project or public works. "Colorado labor" as used in this article means any person who is a resident of the state of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification."*

§ 3.7.3 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, regardless of whether such work is in accordance with Contract Documents and without notice to Owner and Architect that the Contract Documents are at variance with applicable laws, ordinances, rules or regulations, then the Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto. Codes and ordinances shall take full and complete precedence over anything contained in the Contract Documents, except where the Contract Documents require work or materials of higher standards than those required by codes and ordinances, in which case the Contract Documents shall govern.

§ 3.7.4 Concealed or Unknown Conditions

The Contractor represents that it has visited the site of the Project and thoroughly familiarized itself with the local conditions under which the services required hereunder are to be performed; and shall correlate its observations of same with all of the requirements of the Contract Documents. Nevertheless, if the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ as superintendent the person identified in the Contractor's bid. The superintendent or qualified representative shall be in attendance at the Project site during performance of the Work including but not limited to weekends, evenings, nights, and holidays until completion of punch list items and Final Completion is confirmed by the Architect. The superintendent shall represent the Contractor. Communications which may have a material impact on the timing or completion of the Project shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Contractor shall ensure that no subcontractor shall perform work on the site without the presence of the superintendent or a qualified representative. Communication given to the superintendent or assistant superintendent shall be as binding as if given to the Contractor.

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, immediately after being awarded the Contract, shall submit for the Owner's and Architect's, review and approval a progress schedule for the Work. The progress schedules shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The progress schedules shall be updated monthly throughout the duration of the Project and such updates shall be submitted to the Owner and Architect for review and approval. A cash flow schedule in accordance with the specifications shall be submitted and correlated with the progress schedules. Baseline schedule and Schedule of Values must be submitted and approved prior to the submission of the first Pay Application.

§ 3.10.2 The Contractor shall schedule and coordinate the Work of all of its subcontractors and suppliers, including their use of the work site. The Contractor shall keep the subcontractors and suppliers informed of the Project construction schedule to enable the subcontractors and suppliers to plan and perform their work properly.

§ 3.10.3 The Contractor shall in accordance with the requirements of the Contract Documents, submit a construction schedule, which shall provide for the expeditious and practicable execution of the Work. At a minimum, the schedule shall indicate the start and completion of each of the elements on the schedules, and shall indicate the major dependencies among elements on the schedule. The completion time shall be as specified in the Agreement. The schedule shall be revised when the completion time is revised by Change Order per the Contract Documents.

§ 3.10.4 The construction schedule for the performance of the Work shall be a critical path method system with reasonable detail, including a time scaled network and computer printout, all as more fully detailed in the Contract Documents.

§ 3.10.5 Float or slack is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any activities in the schedule. Float or slack is not for the exclusive use or benefit of either the Contractor or the Owner and may be used by and benefit the party who first needs or uses it.

§ 3.10.6 The Contractor shall submit a monthly progress report and schedule update in accordance with the scheduling provision of the Contract Documents.

§ 3.10.7 The Contractor shall complete the Work within the Contract Time and in accord with the most recent schedule, which has been approved in writing by the Architect and Owner.

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

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. **The Contractor shall preserve copies of all Shop Drawings, Product Data, Samples and similar submittals in an orderly manner and deliver the same to the Owner upon Final Completion.**

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

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

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

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

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

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

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

§ 3.13 Use of Site

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

§ 3.13.2 The site shall be kept clean and well organized at all times for purposes of safety, protection and care of project materials and equipment, as well as general aesthetics.

§ 3.13.3 The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the site and all property at the site and adjacent thereto. The Contractor acknowledges that the work site may comprise school buildings and school areas that may be occupied during the performance of some portions of this Contract.

§ 3.13.4 The Contractor shall notify all public utility companies 48 hours prior to the commencement of any work by it or its subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the Architect to proceed has been given to the Contractor. If the utility service must be interrupted, the Contractor shall notify the head of the local administrative services (i.e., town

manager, mayor or town clerk, as applicable) and the utility users affected by the interruption. Such notice shall consist of publication in a local newspaper and/or announcement on local radio or television stations, whichever is most reasonably calculated to give notice to such utility users.

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall at all times keep the Work and premises clean and free from accumulations of waste materials or rubbish, caused by his employees or work, to the satisfaction of the Architect. The Contractor shall designate trash and debris areas where all building debris shall be put daily (these areas to be cleaned weekly). The Work shall be reasonably cleaned daily. At the completion of the Work, the Contractor shall remove all his rubbish from and about the building and all his tools, scaffolding, and surplus materials. The Contractor shall do the following special cleaning for all trades at completion of work: clean all glass, woodwork, painted and decorated work, hardware, tile work, fixtures, floors, windows, metal surfaces (leave the Work perfectly clean). Under no circumstances shall the Owner's trash receptacles be used for construction debris.

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor agrees to protect, defend, indemnify, and save the Owner and its directors, officers, employees, agents and volunteers harmless from and against any and all claims, demands, loss, actions, of any and every kind including attorney fees, in connection with or arising directly or indirectly from Contractor's performance of the work under this Contract or Agreement, provided such claim, demand, loss, or action concerns bodily injury or property damage (other than the work itself). Contractor agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit resulting from this indemnification obligation under Section 3.18.1 of this Contract at the sole expense of the Contractor. Contractor also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against the Contractor or the Owner or to enlarge, in any way, the Contractor's liability but is intended solely to provide for indemnification of the Owner and its directors, officers, employees, agents and volunteers from liability for damages or injuries to third persons or property to the extent arising from Contractor's performance pursuant to this Contract or Agreement.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the

indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.19 FINANCIAL AND CAPABILITY REPRESENTATIONS. The Contractor hereby represents, promises, and warrants that Contractor is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required hereunder.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

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

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

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

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

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

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

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

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

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

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

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

§ 4.2.15 In carrying out his duties under this Article 4, the Architect will be contractually obligated to consult with subcontracted engineers and other professionals as necessary. The Architect will advise the Owner if, in the Architect's judgment, additional professionals should be retained.

§ 4.2.16 Nothing in this Contract shall be interpreted as superseding the Architect's duties and responsibilities as stated in the Contract between the Owner and Architect.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. **The Contractor hereby represents, promises, and warrants that, except for Changes in the Work pursuant to this Article 7, the Contract Sum includes all costs consistent with the Contract Documents and reasonably inferable from the Contract Documents as being reasonably necessary to produce the results required by the Contract Documents.**

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

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

§ 7.1.4 All adjustments to the Contract Sum shall be determined by using one or more of the following methods at the Owner's discretion:

1. A negotiated lump sum. If requested by the Owner, the Contractor shall promptly provide itemized and sufficient substantiating data, including calculations, measurements, cost records, production rates, equipment types and capacity, labor costs by craft and other information which the Owner may reasonably require the Contractor to produce in order to permit the Owner to evaluate the Contractor's lump sum change order proposals.
2. Unit prices stated in the Contract Documents or subsequently agreed upon multiplied by final verified quantities of work performed.

§ 7.1.5 CONTRACT SUM DETERMINATION

Contractor shall not request any increase in the Contract Sum for any claim of a Subcontractor which the Contractor believes is overstated or to which the Contractor believes there is a legitimate defense. In no event shall the charge or credit to the Owner associated with any change exceed the sum of the following:

§ 7.1.5.1 **Direct Labor:** Actual net direct increase or decrease in the cost of the Contractor's labor for work associated with the change. Contractor's labor shall be limited to only labor including full-time salaried field personnel that performs the individual change in the Work including the Contractor's superintendent.

§ 7.1.5.2 **Labor Burden:** Contractor's actual costs for worker's compensation and liability insurance, payroll taxes, social security and employees' fringe benefits (including employer paid health insurance) imposed on the basis of payrolls. This burden must reflect the variability of some burdens, i.e., social security. The burden shall include all small tools, which cost less than \$200 apiece.

§ 7.1.5.3 **Direct Material, Supplies, Installed Equipment:** Actual net direct cost of materials, supplies and equipment incorporated in or consumed by the Work. If actual costs are not available, the cost shall be the lowest commercially available price, including all discounts and rebates and all applicable taxes. Cost shall be based on buying the material, supplies and equipment in the largest practical quantity to receive quantity discounts.

§ 7.1.5.4 **Equipment:** Actual net cost to the Contractor of owned and/or rented equipment other than small tools, to be determined using the following methods:

1. Owned equipment operating costs shall be determined in accordance with the requirements and provisions applicable to owned equipment and extra work contained in the current edition of the Colorado Department of Highways Standard Specifications for Road and Bridge Construction.
2. Rental equipment costs shall be determined using actual invoiced rates less all discounts for bare equipment rental. Operating costs will be determined based on rates in the above-cited Colorado Department of Highways Specifications.

3. Mobilization/demobilization costs will be paid if the equipment is mobilized exclusively for work described in a Change Order. If the equipment is used on base Contract work, no mobilization or demobilization cost will be paid. Mobilization/demobilization cost will be based on using the least expensive means to mobilize or demobilize. Equipment shall be obtained from the nearest available source. When the least expensive methods are used, then costs shown in the actual invoice will be the basis for pricing.

§ 7.1.5.5 Contractor's overhead, profit, commission, or indirect costs: The maximum combined mark-up to the Owner, for the Contractor and all affected Subcontractors, shall not exceed a total of fifteen percent (15%). Such mark-up shall constitute full compensation to the Contractor for all costs and expenses, including all overhead, profit, commissions, or indirect costs, which are not otherwise enumerated above. Subcontractors, if employed by the Contractor on this part of the Work, shall receive such portion of the Contractor's fee as may be agreed and paid to them by the Contractor.

§ 7.1.5.6 Indirect Costs: Indirect costs such as Project Management, Estimating, Scheduling, Office Personnel, etc., are not considered "Direct Labor" and are included in the combined mark-up outlined in Section 7.1.5.5.

§ 7.2 Change Orders

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

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

§ 7.2.2 A Change Order shall be initiated by a Proposal Request (PR) from the Owner submitted through the Architect or from the Contractor to the Architect. The Proposal Request shall include a detailed description of the proposed change with supplementary or revised drawings and specifications. Within ten (10) days from the date of issuance of a Proposal Request, the Contractor shall respond, outlining the amount of the adjustment, if any, in the Contract Sum; and the extent of the adjustment, if any, in the Contract Time that are required as a result of the proposed change. Adjustments to the Contract Sum shall be stated in a lump sum amount or unit prices as outlined in Section 7.1.4. Justification for adjustment to the Contract Time must be provided in the format outlined in the Contract Documents. "To be determined" or similar description, is not acceptable as an adjustment to the Contract Time. Proposal Requests that have been approved and signed by all parties are considered a Change Order as defined in Section 7.2.1 and is authorization to proceed with the Work described therein. Once a month, approved Proposal Requests will be grouped together using AIA Form G701 for accounting purposes. The Form G701 shall list the approved Proposal Requests, the net change in Contract Sum, the net change in Contract Time, and modification to the date of Substantial Completion. The issuance of Form G701 shall not change any of the provisions outlined in an approved Proposal Request.

§ 7.3 Construction Change Directives

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

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

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

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

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

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

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

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

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

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

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

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

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.1.5 The date of Final Completion is the date that the Architect certifies in the Final Certificate for Payment pursuant to Section 9.10.1 that the Work is acceptable under the Contract Documents and the Contract is fully performed.

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

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

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

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

§ 8.4 DELAY DAMAGES

§ 8.4.1 The Contractor agrees that delays resulting from any causes other than acts or omissions of the Owner, the Architect, their employees, agents or officials shall be considered fully compensated by a time extension and agrees to make no claims for monetary damages for such delays. In no event shall the Contractor be entitled to recover any delay costs caused by the acts or omissions of the Contractor, its employees or agents.

§ 8.4.2 If the Contractor believes it has suffered delays in performing the Contract that are caused by acts or omissions of the Owner or the Architect, the Contractor may submit a claim pursuant to Article 15. Failure of the Contractor to comply with all applicable requirements of Article 15 shall constitute a waiver of any claim for damages resulting from such delays.

§ 8.4.3 Time is of the essence of the Work specified in the Contract Documents and the Owner will incur substantial damages if the Work is not completed within the time fixed for the completion of the Work, or within the time to which such completion may be extended by consent of the Owner. Inasmuch as the actual damages for such delay are impossible to determine, the Contractor agrees that it and its surety shall be liable for and shall pay Liquidated Damages to the Owner.

§ 8.4.4 For failure of the Contractor to meet the date of Substantial Completion of the Work within the time set forth in the Agreement, or as modified by Change Order, the Contractor shall pay the Owner Liquidated Damages in accordance with the following schedule:

CONTRACT AMOUNT	LIQUIDATED DAMAGES PER CALENDAR DAY
Up to \$99,999	\$200
\$100,000 to \$499,999	\$250 + .05% of Contract amount exceeding \$100,000
\$500,000 to \$999,999	\$450 + .04% of Contract amount exceeding \$500,000
\$1,000,000 to \$1,999,999	\$650 + .03% of Contract amount exceeding \$1,000,000
\$2,000,000 to \$5,999,999	\$950 + .02% of Contract amount exceeding \$2,000,000
\$6,000,000 and Greater	\$1,750 + .01% of Contract amount exceeding \$6,000,000

§ 8.4.5 Additionally, for each and every calendar day in excess of the date(s) established by the Certificate of Substantial Completion for completion of the punch-list, liquidated damages shall accrue in an amount equal to 1.5 times the above stated amounts.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect and the Owner, a schedule of values allocated to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect or the Owner. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. No payments will be made under this Contract until the Architect and Owner agree to the schedule of values. Any changes to the schedule of values shall be submitted to the Architect and Owner, and supported by such data to substantiate its accuracy as the Architect and Owner may require, and unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.2 Unless otherwise directed in writing by the Owner or Architect, the schedule of values shall be prepared in such a manner that each major item of subcontractor work is shown as a single line item on AIA Document G 703, Application and Certificate for Payment, Continuation Sheet and coordinated with the Project Schedule as detailed in the Specifications. If re-submittal is required after review by the Architect, the Contractor shall revise and resubmit the schedule of values in the same manner as required for the original submittal.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. All Applications for Payment shall be submitted by the Contractor to the Architect in the AIA G702 and G703 format.

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

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

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

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

§ 9.3.4 With each application for payment, the Contractor shall submit the required documentation as outlined in the Specifications.

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 failure of the Contractor to submit the required documentation as detailed in the Specifications with an application for payment;
- .9 failure to comply with any laws, ordinances, regulations or orders of any public authority governing the performance of the Work, including failure to obtain necessary permits or licenses; or
- .10 the Owner has been required to correct defective work.

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

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld; provided, however, that the Owner may continue to withhold payment if the amount withheld for one or more particular reasons exceeds the amounts payable for work for which (i) there is no reason to withhold payment, or (ii) the reason to withhold payment has been removed. Additionally, and notwithstanding any provision of the Agreement to the Contrary, the Owner may refuse to make payment of the full amount recommended by the Architect because:

- a. Claims have been made against the Owner on account of Contractor's performance or furnishing of the Work;
- b. Liens have been filed or recorded in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens;
- c. There are other items entitling Owner to a set-off against the amount recommended; or
- d. The Owner has a reasonable belief that any reasons enumerated in Section 9.5.1 exist.

If the Owner refuses to make payment of all or any portion of the amount recommended by the Architect, the Owner will give the Contractor written notice (with a copy to the Architect) stating the reasons for such action. The Owner will promptly pay the Contractor the amount so withheld, or any adjusted amount agreed upon by the Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for the withholding. If it is subsequently determined that the Owner's refusal to pay was not justified, the amount withheld shall be paid immediately to the Contractor.

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

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the

Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 Upon completion of the Work covered by each pay application, and before or contemporaneously with payment of any sums due Contractor, Contractor shall produce and deliver to Owner, full, complete, and properly executed releases for the period of time covered by such pay application from all persons or entities who have furnished materials or labor, including Contractor, in connection with the Work. Such releases may be conditioned upon payment of an amount stated in such release for the work done for the applicable period of time. Contractor warrants that it will pay all subcontractors, sub-subcontractors, materialmen and suppliers any payment due them arising out of this Contract promptly upon payment by the Owner. Without in any way limiting the foregoing, the Owner has the right at any time to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor the Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may be otherwise required by law.

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

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

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

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

§ 9.6.9 Retainage shall be held in the amount of five percent (5%). Retainage shall be held against each line item of the Schedule of Values as work is completed and/or stored throughout the project duration. The Contractor expressly agrees that securities shall not be substituted for any retainage specified in this Section and that it shall not request any such substitution. This Section 9.6.9 shall be deemed amended to comply with any applicable retainage laws of the State of Colorado or any amendment thereto.

§ 9.7 Failure of Payment (DELETED)

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Substantial Completion also means that all major systems are operational, and all safety features are completed.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be

completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will **conduct an observation** to determine whether the Work or designated portion thereof is substantially complete. If the Architect's observation discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. **In addition to the other requirements of this Contract, Contractor must have obtained the written approval and issuance of any occupancy permits required by the laws of the State of Colorado before Contractor shall be deemed to have achieved substantial completion.**

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

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

§ 9.8.6 Owner occupancy and use of substantially completed work does not constitute final acceptance by the Owner of such work.

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 **"Final Completion" of the Work occurs following Substantial Completion and when the Architect confirms, in writing, that the Contractor has completed the Work in accordance with the Contract Documents, including completion of all punch lists and cleanup work. Upon receipt of written notice that the Work is ready for final review and acceptance, and upon receipt of a Final Application for Payment, the Owner and the Architect will promptly review the completed Work and, if they find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and observations, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will**

constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) operating and maintenance manuals, (6) identification lists of all materials and equipment, (7) Inspection Certificates, (8) record documents, (9) demonstration by the Contractor to the Owner concerning the proper operation and maintenance of all equipment, (10) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (11) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

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

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

§ 9.10.6 The Work shall be advertised in accordance with C.R.S. § 38-26-107, by two (2) publications of notice, the last publication appearing at least ten (10) days prior to the time of final settlement. On the date of final settlement thus advertised, and after the Contractor has completed the foregoing requirements and the Owner is satisfied that no claims have been filed, final payment and settlement shall be made.

§ 9.10.7 If any unpaid claim for labor, materials, rental, machinery, tools, supplies or equipment is filed prior to the date set for final settlement, the Owner shall withhold from the Contractor sufficient funds to ensure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or its duly authorized agent or assignee. If it is further understood by the Contractor that the Owner will withhold from payment any funds it may be required by law to withhold or that it may, in the determination of the Owner, be entitled to withhold, and final payment will not be made until, in the sole determination of the Owner, all conditions of law have been met.

§ 9.10.8 In the event there are, at the time set for final settlement, outstanding claims against the Contractor or its subcontractors, or for any other reason the Contractor is not able to give a proper affidavit that liens or other obligations have been properly paid and settled, the Owner may, at its sole discretion, waive the requirement of the said affidavit,

provided the surety on the Performance and Payment Bonds will agree to the Owner making final settlement without in any way lessening or modifying the surety's liability under such Performance and Payment Bonds.

§ 9.10.9 When the Work is complete, the Contractor shall provide one complete set, in hard copy, of Drawings and Specifications upon which are identified all modifications made during construction so as to represent the as-built condition of the Project and shall deliver same to the Architect for inclusion in the Record Documents.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby, including without limitation the Architect and Architect's employees and consultants;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- .4 students, staff, and others associated with the Poudre School District R-1.

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be

given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.8.1 The Contractor shall take over and assume all responsibility for the areas of work that are covered under the Contract Documents. The Contractor shall provide and maintain all protection as required by the governing laws, rules, regulations, and ordinances. The Contractor shall be responsible for any loss or damage caused by him or his workmen to the property of the Owner and shall make good any loss, damage, or injury without cost to the Owner.

§ 10.2.8.2 The Contractor shall be solely responsible for the safety of his work, materials, equipment, tools, etc., on the site and shall, if he deems it necessary or expedient, employ at his own expense the services of a competent watchman. The Owner disclaims all responsibilities for the safety of the Work, materials, equipment, tools, etc., or for any damage which may be done to same due to theft or any other cause until such time as the completed work is formally accepted by the Owner.

§ 10.2.8.3 The Contractor shall take special precautions against fire and shall comply fully with the requirements of city, county, and insurance authorities including stipulation as outlined below:

1. Combustible refuse shall be removed from the site and disposed of daily in a manner approved by the governing authorities.
2. Private and public streets, sidewalks, roads, etc., shall be protected and maintained during the course of work, and any damage to same shall be repaired by the Contractor at his own expense.

§ 10.3 Hazardous Materials and Substances

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

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

§ 10.3.3 (DELETED)

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

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

§ 10.3.6 If, without negligence or other fault by the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Contractor may submit a Change Order Request for such additional cost under Article 7.

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

Prior to the commencement of any work, Contractor shall forward Certificates of Insurance evidencing the insurance coverages required pursuant to this Article 11 to the Owner and a copy of the policy for any builders' risk/installation floater as required under this Contract. The insurance required shall be procured and maintained for the duration of the Contract and shall be written for not less than the following amounts set forth below, with insurance companies licensed in the State of Colorado and acceptable to the Owner. Contractor shall not permit Subcontractors to commence work until insurance has been obtained and accepted by Contractor. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

THE OWNER MUST APPROVE ANY DEVIATIONS FROM THE STANDARDS GIVEN BELOW

§ 11.1.1 WORKERS' COMPENSATION

Workers' Compensation insurance covering injury to, or occupational disease or death of, all employees engaged in providing the scope of work under this Contract (including active partners or individual owners) in accordance with the statutory requirements of Colorado.

Workers' Compensation

- | | |
|--|--|
| a. State of Colorado | Statutory |
| b. Applicable Federal | Statutory |
| c. Employers' Liability: | \$500,000 each accident
\$500,000 disease – policy limit
\$500,000 disease – each employee |
| d. Statutory coverage in all states that Contractor is licensed to work. | |

The Contractor shall also require each subcontractor to furnish Workers' Compensation insurance including occupational disease provision for all of the subcontractor's employees; otherwise the Contractor accepts full liability and responsibility for the subcontractor's employees.

§ 11.1.2 COMMERCIAL GENERAL LIABILITY

Commercial General Liability policy shall provide coverage on an occurrence basis including Premises/Operations; Liability assumed under an Insured Contract (including defense cost assumed under Contract); Personal Injury and Advertising Injury; and Products and Completed Operations. This policy must not exclude or reduce any coverage for explosion, collapse and underground (XCU) coverage.

Commercial General Liability:

Estimated Project Construction Cost	General Contractor / CM @ Risk General Liability Requirements
Less than \$10,000,000	\$2,000,000 Per Occurrence \$2,000,000 General Aggregate \$2,000,000 Products/Completed Operations Aggregate
\$10,000,000 to \$29,999,999	\$5,000,000 Per Occurrence \$5,000,000 General Aggregate \$5,000,000 Products/Completed Operations Aggregate
\$30,000,000 to \$49,999,999	\$10,000,000 Per Occurrence \$10,000,000 General Aggregate

	\$10,000,000 Products/Completed Operations Aggregate
\$50,000,000 to \$99,999,999	\$25,000,000 Per Occurrence \$25,000,000 General Aggregate \$25,000,000 Products/Completed Operations Aggregate
Over \$100,000,000	Limits and type of insurance program to be determined. Contact Risk Management

- a. Limits as required in this Section 11.1.2 may be met through a combination of the primary general liability policy and Contractor's umbrella/excess liability policy.
- b. This coverage shall be written on a primary basis and no other insurance of the Owner will be called on to contribute to a loss stated on the Certificate of Insurance.
- c. A per project aggregate shall apply.
- d. Products and Completed Operations Coverage must be maintained for eight years after final payment. Contractor shall continue to provide evidence of such coverage to Owner.

§ 11.1.3 CONTRACTUAL LIABILITY - as stated in the Commercial General Liability Section 11.1.2

§ 11.1.4 PERSONAL INJURY – as stated in the Commercial General Liability Section 11.1.2.

§ 11.1.5 COMMERCIAL AUTOMOBILE LIABILITY

Commercial Automobile Liability (owned, non-owned, leased or hired)

- a. Bodily Injury and Property Damage (CSL): \$1,000,000 Per Accident
- b. The Contractor shall be certain coverage is provided which conforms to any specific stipulation in Colorado law.

§ 11.1.6 UMBRELLA / EXCESS LIABILITY – umbrella/excess liability coverage shall extend over the General Liability, Automobile Liability and Employers Liability coverages:

Umbrella/Excess Liability – for projects under \$10,000,000

- a. Policy – Each Occurrence \$5,000,000 – Each Occurrence
 \$5,000,000 General Aggregate
 \$5,000,000 Products/Completed Operations Aggregate
 Products/completed operations coverage shall be maintained for eight years after the project has been completed.

Umbrella/Excess Liability – for projects \$10,000,000 or over

- a. Policy – Each Occurrence \$10,000,000 – Each Occurrence
 \$10,000,000 General Aggregate
 \$10,000,000 Products/Completed Operations Aggregate
 Products/completed operations coverage shall be maintained for eight years after the project has been completed.

§ 11.1.7 BUILDERS RISK/INSTALLATION FLOATER/PROPERTY COVERAGE

- .1 ***Owner will carry the Builders' Risk for construction of all NEW schools and large additions (over \$10,000,000) to existing schools.*** The Contractor will be responsible for the deductible (\$10,000). Policy will include the interests of the Contractor, Subcontractor and Sub-subcontractors as named insureds.
- .2 For all other construction contracts, the Contractor shall provide Builder's Risk insurance on a "Special Covered Cause of Loss Form", including flood and earthquake. The limit of coverage will be 100% of the contract value. The policy shall have an All Other Peril deductible of no more than \$5,000 for projects under Ten Million Dollars (\$10,000,000) and no more than \$10,000 for projects Ten Million Dollars (\$10,000,000) and over.
- .3 The builders' risk/installation floater shall include the interest of the Owner, the General Contractor, Subcontractors and sub-tier contractors in the Project.

- .4 Shall include waiver of subrogation against all parties named as insureds but only to the extent the loss is covered.
- .5 Delete any coinsurance provisions.
- .6 Shall be written on a replacement cost basis including modification of the valuation clause to cover all costs needed to repair the structure or Work (including overhead and profit) and pay based on the values figured at the time of rebuilding or repairing, not at time of loss.
- .7 Include a beneficial occupancy clause – the policy shall specifically permit occupancy of the building during construction. The Owner and Contractor shall take reasonable steps to obtain consent of the insurance company and delete any provisions with regard to restrictions with the Occupancy Clauses within the builders' risk/installation floater policy.
- .8 Shall not exclude damage to interior of buildings caused by perils insured against.
- .9 Losses paid under the builders' risk/installation floater insurance policy or policies shall be paid directly to the Owner by the Insurers. The Owner shall have the authority to adjust and settle any losses in excess of the deductible with the insurance carrier unless one of the parties in interests shall object in writing within five (5) days after occurrence of loss to the Owner's exercise of this power. It is expressly agreed that nothing in this section shall be subject to arbitration and any references to arbitration are expressly deleted.
- .10 Delete any exclusions pertaining to Ordinance or Law provisions.
- .11 The Contractor shall be responsible for the deductible on each and every builders' risk/installation floater loss (up to \$10,000 on Owner provided Builders Risk).
- .12 The Contractor shall purchase and maintain Equipment Breakdown insurance, which shall specifically cover such insured objects during installation and until final acceptance by the Owner.
- .13 The Policy shall be amended to show thirty (30) days' notice of cancellation or non-renewal. Such notice shall be given to the Owner and Contractor.
- .14 At option of the Owner, Owner may include Soft Costs (including Delay in Completion/Opening Cost, Loss of Use) coverage. Owner agrees to provide the necessary exposure base information for quotation by the builders' risk/installation floater carrier. Owner agrees to pay the premium associated with the Soft Costs coverage, should Owner decide to purchase this coverage.
- .15 If the Owner is damaged by the failure or neglect of the Contractor to purchase or maintain insurance as described above, without notifying the Owner, then the Contractor shall bear all reasonable costs attributed thereto.

§ 11.1.8 CONTRACTORS POLLUTION LIABILITY

The Owner requires this coverage whenever work at issue under this Contract involves potential pollution risk to the environment or loss caused by pollution conditions (including asbestos) that may arise from the operations of the Contractor described in the Contractor's scope of services. If the Contractor is transporting any type of hazardous materials to and from the jobsite, the Contractor shall provide the appropriate transportation coverage under the Contractor's Pollution Liability or the Contractor's Commercial Automobile Liability coverage using ISO endorsement CA9948 and MCS-90, as required.

Contractors Pollution Liability – for projects under \$25,000,000

Per Loss: \$2,000,000
Aggregate: \$2,000,000

Contractors Pollution Liability – for projects over \$25,000,000

Per Loss: \$5,000,000

Aggregate: \$5,000,000

The Contractor's Pollution Policy shall continue to be renewed on an annual basis to provide coverage for the Contractor's completed operations up to eight years after the project is completed and accepted by the Owner.

§ 11.1.9 All insurance policies except for Commercial Automobile and Workers' Compensation and as noted in the Builders' Risk/Installation Floater section shall be endorsed to include the Owner, its' elected officials and employees as additional insureds with respects to liability and defense of suits arising out of the activities performed by, or on behalf of the Contractor, including products/completed operations coverage. In addition, the Owner shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

§ 11.1.10 The Owner reserves the right to reject any Insurer it deems not financially acceptable by insurance industry standards. The insurance shall be with a carrier licensed in the State of Colorado and shall have a minimum AM Best rating of A- VII. Owner in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

§ 11.1.11 The Certificates of Insurance provided pursuant to Section 11.1 shall state that the Contractor and/or its insurance broker/agent shall notify Owner of any cancellation, non-renewal or material reduction in coverage or limits of any insurance with thirty (30) days of receipt of insurers' notification to that effect. All replacement insurance coverage that is deemed "claims made" policies must show proof of extended "tail" coverage to the beginning of this Contract.

§ 11.1.12 The Contractor shall furnish separate certificates and endorsements for each Subcontractor.

§ 11.1.13 The Contractor and all subcontractors shall be responsible for all equipment whether owned, leased or borrowed.

§ 11.1.14 For any level of coverage, there will be no restriction of "other insurance" clauses, thus enabling the Insured to stack the coverage so provided if damages exceed the limits of a single policy.

§ 11.1.15 The Contractor agrees that its insurance is primary and no insurance of the Owner will be called on to contribute to a loss.

§ 11.2 NON-WAIVER

The parties hereto understand and agree that the Owner is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act et seq., as from time to time amended, or otherwise available to the Owner or its elected officials, employees, agents, and volunteers.

§ 11.3 Waivers of Subrogation

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

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in

accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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

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

§11.5 Adjustment and Settlement of Insured Loss

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

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§ 11.6 PERFORMANCE BOND AND PAYMENT BOND

§ 11.6.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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

§ 11.6.3 In the event the surety on the Contractor's bond becomes irresponsible or insolvent or ceases to be qualified to do business within the State of Colorado, then the Contractor shall promptly submit a new performance and payment bond by competent and qualified corporate surety in the same amount and form as that theretofore given.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed.

Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

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

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

§ 12.3.1 In the event final payment has been made, the Contractor shall pay and be liable to the Owner for the reduction in the Contract Sum.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law and Venue

The Contract and its interpretation shall be governed by Colorado law. Sole venue for any civil suit brought to enforce or interpret this Contract shall be in the District Court of Larimer County, Colorado, and no such suit shall be removed to any other court.

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.3.3 All remedies for breach of Contract Documents and breach of warranty are cumulative and not exclusive of each other, providing that double recovery shall not be allowed.

§ 13.4 Tests and Inspections

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

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

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

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

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit, and costs incurred by reason of such termination.

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

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

§ 14.4.4 In the event of any termination of the Contract, the Contractor agrees to reasonably cooperate and provide any information requested by Owner in connection with completion of the Project.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2. The Statute of Limitation period as to any Claim shall commence upon such time as the cause of action accrues under Colorado law or upon the date of Final Completion, whichever is later. In the event of termination of the Contract prior to Final Completion, the Commencement date shall be as of the time the cause of action accrues under Colorado Law or the date of termination of the Contract, whichever is later.

§ 15.1.3 Notice of Claims

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

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

§ 15.1.3.3. Nothing in this contract shall be deemed a waiver of the provisions of the Colorado Governmental Immunity Act.

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages (DELETED)

§ 15.2 Initial Decision

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

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

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the

reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

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

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

§ 15.3 Mediation

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

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

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

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

§ 15.4 Arbitration (DELETED)

§ 15.5 LEGAL ACTIONS

§ 15.5.1 In the event of material breach by the Contractor of any provisions of the Contract Documents, the Owner may, in addition to all other legal and equitable remedies available to it, recover from the Contractor all costs and reasonable attorney fees which the Owner may incur as a result of such breach or in the enforcement of the Contract Documents.

§ 15.5.2 In like manner, in the event the Contractor sues the Owner for nonpayment, the Contractor may, in addition to all other legal and equitable remedies available to it, recover from the Owner all costs and reasonable attorney fees which the Contractor may incur as a result of such nonpayment. This clause shall not apply to Owner's nonpayment resulting from a reasonable belief of Contractor breach.

§ 15.5.3 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any litigation. The Owner shall continue to make payments to the Contractor in accordance with the Contract Documents, unless the Owner, in good faith, believes the monies are not owing or are subject to set off or adjustments.

ARTICLE 16 OTHER MISCELLANEOUS PROVISIONS

§ 16.1 Inspection by the Owner or any other person acting in the Owner's behalf; any order by the Owner for the payment of monies; any payment for or acceptance of any work, any extension of time, or any possession taken by Owner, shall not operate as a waiver of any provision of the Contract or any power therein reserved to the Owner or any right to damages herein provided. No waiver of any breach of the Contract shall be held to constitute a waiver of any other or subsequent breach thereof.

§ 16.2 Owner and Architect, at all reasonable times shall have access to Contractor's project records for this project, including, bid estimates, payment records, payroll records, job meeting minutes, daily reports, logs and diaries.