

# ***CONTRACT***

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## **FOR DESIGN BID BUILD CONTRACTOR SERVICES**

Contract Documents  
Design Bid Build (D.B.B.) Contractor Services

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Design, Bid, Build

Agreement

Exhibit A - Certificate of Insurance and Payment and Performance Bonds

Notice to Proceed

## Agreement

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CONSTRUCTION AGREEMENT BETWEEN

**Campbell County School District No. 1**

AND

**Michael's Construction**

WITH THE WYOMING STATE CONSTRUCTION DEPARTMENT,

SCHOOL FACILITIES DIVISION

AS A THIRD PARTY BENEFICIARY OF THE AGREEMENT

FOR THE CONSTRUCTION OF

**CCHS Boiler Building Demolition and Remodel**

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This Agreement is made by and between **Campbell County School District No. 1**, hereinafter referred to as "District," and **Michael's Construction**, hereinafter referred to as "Contractor," with the Wyoming State Construction Department (SCD), School Facilities Division (SFD), 2300 Capitol Avenue, Unit D, Cheyenne, Wyoming, 82002, hereinafter referred to as "SFD," as a third party beneficiary of the Agreement.

The District, Contractor, and the SFD in consideration of the mutual covenants herein set forth, agree as follows:

## **ARTICLE 1, GENERAL TERMS**

### **1.1 Interested Parties:**

1.1.1 **"Owner:"** The "Owner" referred to in this Agreement is the **Campbell County School District No. 1, 1000 W 8th Street, PO Box 3033, Gillette, WY 82717-3033** (District), as the primary contracting party, and the Wyoming State Construction Department (SCD), School Facilities Division (SFD) as a signatory indicating its approval of the form of this Agreement and pursuant to the execution of its statutory responsibilities and as a claimant of third party beneficiary rights hereunder. The SCD is an agency of the State of Wyoming with governance over the design specifications and funding for the capital construction project that is the subject of this Agreement. Significant funding for this Project will be provided by the SCD. Approval of the SCD is required by Wyoming law for significant portions of the responsibilities assigned to the "Owner" by the contract documents. To facilitate the relationship established by law between the District and the SCD, all references to "Owner" in this Agreement shall be read to include the District and the SCD in their respective capacities in the exercise of the powers and responsibilities granted to the District in cooperation with and upon the approval of the SCD. References to the District herein shall include the Board of Trustees and administration of the District and references to the SCD herein shall include the Department as well as all SCD planning, design and construction staff and administration.

1.1.2 **"Contractor:"** The "General Contractor" referred to in this Agreement is **Michael's Construction, PO Box 1856, Gillette, WY 82717-1856**.

1.1.3 **"Architect:"** The "Architect" referred to in this Agreement is **Robert Detimore, AIA, Principal and the firm of Associated Construction Engineering, 19 S. Main, Sheridan, WY 82801**.

1.2 **Scope of the Project:** The General Contractor shall furnish construction services in connection with the scope of the Project described generally as **CCHS Boiler Building Demolition and Remodel**.

1.3 **Contract Documents:** Owner and the General Contractor agree that the Contract Documents for the Project shall consist of this Agreement and the following documents incorporated into and made a part of this Agreement, and are as fully a part of the Agreement as if attached to this Agreement or repeated herein, to-wit:

1.3.1 Certificate of Insurance and Payment and Performance Bonds to be attached hereto as Exhibit A.

1.3.2 Any amendments or modifications of this Agreement made after execution of this Agreement.

1.3.3 The Project Drawings, Specifications and Addenda, and related bid documents, pre-qualification submittals, accounting and construction documents to include but not be limited to Schedule of Values.

1.4 **Definitions:** Definitions of terms used in this Agreement and wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1.4.1 Addenda - Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

- 1.4.2 Agreement or Contract - The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
- 1.4.3 Application for Payment -The form acceptable to Architect or Owner's representative which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
- 1.4.4 Architect - The individual or entity named as such in the Agreement. The term Architect as used herein includes both professional architects and engineers.
- 1.4.5 Architect's Consultant - An individual or entity having a contract with Architect to furnish services as Architect's independent professional associate or consultant with respect to the Project and who is identified as such in the Contract Documents, if any.
- 1.4.6 Asbestos - Asbestos Containing Material (ACM) when referring to school buildings means any material or product which contains more than 1 percent asbestos as recognized by the Environmental Protection Agency (EPA).
- 1.4.7 Bid - The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.4.8 Bidding Document - The Bidding requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
- 1.4.9 Bidding Requirements - The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.
- 1.4.10 Bonds - Performance and payment bonds and other instruments of security.
- 1.4.11 Change Order - A document recommended by Architect which is signed by General Contractor, Owner and Architect, and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
- 1.4.12 Claim - A demand or assertion by Owner or General Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
- 1.4.13 Contract or Agreement - The entire and integrated written agreement between Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
- 1.4.14 Contract Documents - The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), General Contractor's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award), and any Notice to Proceed, Bonds, Supplementary Conditions, Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, and Architect's or Owner's representative written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Contract Documents may be prepared and provided in printed or electronic media format of text, data, graphics, and the like, as determined for each project by the Owner.
- 1.4.15 Contract Price - The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions modification for Unit Price Work).

- 1.4.16 Contract Times - The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by Architect's or Owner's representative's written recommendation of final payment.
- 1.4.17 Contractor - The individual or entity with whom Owner has entered into the Agreement.
- 1.4.18 Cost of the Work - The sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim.
- 1.4.19 Day or Days – A calendar day or calendar days.
- 1.4.20 Drawings - That part of the Contract Documents prepared or approved by Architect which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
- 1.4.21 Effective Date of the Agreement - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last party to sign and deliver.
- 1.4.22 Field Order - A written order issued by Architect which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
- 1.4.23 General Requirements - The General Requirements pertain to all sections of the Specifications.
- 1.4.24 Hazardous Environmental Condition - The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
- 1.4.25 Hazardous Waste - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time or other laws.
- 1.4.26 Laws or Regulations - Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction of the State of Wyoming and/or United States of America.
- 1.4.27 Liens - Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
- 1.4.28 Material - All things of all kind whatsoever whether ancient or modern found or discovered on, under or around the Site including, without limitation, minerals, metals, objects, articles, scrap, cable and wire, plant, equipment and vehicles.
- 1.4.29 Milestone - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- 1.4.30 Notice to Proceed - A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
- 1.4.31 Owner's Project Representative - The authorized representative of Owner who may be assigned to the Site or any part thereof.

1.4.32 Partial Utilization or Partial Occupancy - Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

1.4.33 PCBs--Polychlorinated biphenyls.

1.4.34 Petroleum - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

1.4.35 Project - The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

1.4.36 Project Manual -The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

1.4.37 Radioactive Material - Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

1.4.38 Samples - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

1.4.39 Shop Drawings - All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

1.4.40 Site - Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

1.4.41 Specifications - That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

1.4.42 Subcontractor - An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

1.4.43 Substantial Completion - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Architect, the Work is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

1.4.44 Supplementary Conditions - That part of the Contract Documents which amends or supplements this Agreement, if any.

1.4.45 Supplier - A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

1.4.46 Underground Facilities - All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or

other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

1.4.47 Unit Price Work - Work to be paid for on the basis of unit prices.

1.4.48 Work - The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

1.4.49 Work Change Directive - A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner upon recommendation of the Architect ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.4.50 Written Amendment - A written statement modifying the Contract Documents, signed by Owner, Contractor, and Architect or Owner's representative on or after the Effective Date of the Agreement and normally dealing with the non-Architecting or non-technical rather than strictly construction-related aspects of the Contract Documents.

1.5 Terminology: Generally, unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning subject to the following:

1.5.1 Intent of Certain Terms or Adjectives - Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Architect as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Architect any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of the Contract Documents.

1.5.2 Day - The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

1.5.3 Defective - The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Architect's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with the terms of the Contract Documents).

1.5.4 Furnish, Install, Perform, Provide



1.5.4.1 The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

1.5.4.2 The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

1.5.4.3 The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

1.5.4.4 When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

## **ARTICLE 2, THE WORK OF THIS CONTRACT**

2.1 The Work of the Project: Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## **ARTICLE 3, CONTRACT SUM**

3.1 Bid Contract Sum: Owner shall pay Contractor the Contract Sum for Contractor's performance of the Contract. The Contract Sum shall be a base bid of **three hundred forty-one thousand three hundred forty-five DOLLARS AND 00/100'S (\$341,345.00)**, subject to additions by alternates or additions and deductions as provided in the Contract Documents. This Contract Sum shall represent the Total Construction and Renovation Cost for the Project.

3.2 Bid Alternates: The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by Owner: *Alternate #1 paint all surfaces except the ceiling in the storage room 001 for \$5,516 and Alternate #2 add heat to storage room 001 for \$14,752*

3.3 Total Contract Sum: The Total Contract Sum including the Bid Contract Sum, accepted alternates and unit priced materials and labor is **three hundred sixty-one thousand six hundred thirteen DOLLARS AND 00/100'S (\$361,613.00)**.

## **ARTICLE 4, BONDS AND INSURANCE**

4.1 Performance, Payment, and Other Bonds:

4.1.1 Contractor shall furnish performance and payment Bonds, each in an amount equal to the Contract Sum as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Contract Documents.

4.1.2 All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

4.1.3 If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to

meet the requirements of paragraph 4.1.2 above, Contractor shall within twenty (20) days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 4.1 and 4.2 hereof.

4.2 Licensed Sureties and Insurers: All Bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the minimum limits and coverages as required on the table below; policy limits and coverages may be increased pursuant to the provisions of the Supplementary Conditions. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided herein.

<b>Insurance Required</b>	<b>Level of Coverage – Determined by Contract Amount</b>			
<b>Contract Amount</b>	<b>\$0 - \$100,000</b>	<b>\$100,000 to \$250,000</b>	<b>\$250,000 to \$500,000</b>	<b>\$500,000 plus</b>
Workers' Compensation	Required Statutory Limits	Required Statutory Limits	Required Statutory Limits	Required Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence; and \$1,000,000 aggregate	\$1,000,000 per occurrence; and \$1,000,000 aggregate	\$1,000,000 per occurrence; and \$2,000,000 aggregate	\$2,000,000 per occurrence; and \$2,000,000 aggregate
Excess Liability	\$2,000,000	\$2,000,000	\$2,000,000	\$5,000,000
Property (Builder's Risk) Insurance	Amount of the full replacement or repair cost of structures located thereon not subject to demolition and clearance and cost of proper disposal and removal of debris with a deductible amount no greater than \$5,000.	Amount of the full replacement or repair cost of structures located thereon not subject to demolition and clearance and cost of proper disposal and removal of debris with a deductible amount no greater than \$5,000.	Amount of the full replacement or repair cost of structures located thereon not subject to demolition and clearance and cost of proper disposal and removal of debris with a deductible amount no greater than \$5,000.	Amount of the full replacement or repair cost of structures located thereon not subject to demolition and clearance and cost of proper disposal and removal of debris with a deductible amount no greater than \$5,000.
Automobile Liability	\$1,000,000 per occurrence	\$1,000,000 per occurrence	\$1,000,000 per occurrence	\$1,000,000 per occurrence

4.3 Certificates of Insurance: Contractor shall deliver to Owner, with copies to each additional insured identified herein, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain. Owner shall deliver to Contractor, with copies to each additional insured identified herein, certificates of insurance (and other evidence of insurance requested by Contractor's or any other additional insured) which Owner is required to purchase and maintain.

4.4 Contractor's Liability Insurance: Contractor shall purchase and maintain such liability and other insurance that meets the insurance requirement set forth in the contract documents for the Work being performed and as will provide protection from claims set forth below which may arise out of or result

from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

4.4.1 Claims under workers' compensation, disability benefits, and other similar employee benefit acts;

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

4.4.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4.4.4 Claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (ii) by any other person for any other reason.

4.4.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and,

4.4.6 Claims for damages because of bodily injury or death of any person or property damage arising out of Ownership, maintenance or use of any motor vehicle.

4.5 Additional Insured: The policies of insurance so required by paragraph 4.4 to be purchased and maintained shall:

4.5.1 With respect to insurance required by paragraph 4.4, include as additional insured Owner, Architect, Architect's Consultants, and any other individuals or entities identified herein, all of whom shall be listed as additional insured, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insured, and the insurance afforded to these additional insured shall provide primary coverage for all claims covered thereby;

4.5.2 Include at least the specific coverages and be written for not less than the limits of liability provided in this Agreement or required by Laws or Regulations, whichever is greater;

4.5.3 Include completed operations insurance;

4.5.4 Include contractual liability insurance covering Contractor's indemnity obligations;

4.5.5 Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner, Architect and Contractor and to each other additional insured identified in this Agreement to whom a certificate of insurance has been issued (and the certificates of insurance furnished by Contractor pursuant to paragraph 4.3 will so provide);

4.5.6 Remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance; and

4.5.7 With respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Contractor shall furnish Owner and each other additional insured identified herein to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter).

4.6 Owner's Liability Insurance: In addition to the insurance required to be provided by Contractor under this Article 4, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

4.7 Property Insurance:

4.7.1 Unless otherwise provided in this Agreement, Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in this Agreement or required by Laws and Regulations). This insurance shall:

4.7.1.1 Include the interests of Owner, Contractor, Subcontractors, Architect, Architect's Consultants, and any other individuals or entities identified in this Agreement, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

4.7.1.2 Be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by this Agreement, with the Contractor being responsible for payment of any deductibles;

4.7.1.3 Include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4.7.1.4 Cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Architect;

4.7.1.5 Allow for partial utilization of the Work by Owner;

4.7.1.6 Include testing and startup;

4.7.1.7 Be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Architect with thirty (30) days written notice to each other additional insured to whom a certificate of insurance has been issued; and

4.7.1.8 Contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty (30) days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 4.7.

4.7.2 Contractor shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by this Agreement or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, Architect, Architect's Consultants, and any other individuals or entities identified in this Agreement, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

4.7.3 Owner shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in this Agreement. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such

Loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

4.8 Waiver of Rights: Owner and Contractor intend that all policies for Property Insurance only purchased in accordance with 4.7 will protect Owner, Contractor, Subcontractors, Architect, Engineer's Consultants, and all other individuals or entities identified in this Agreement to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insured or additional insured thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, Architect, Architect's Consultants, and all other individuals or entities identified in this Agreement to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

4.9 Receipt and Application of Insurance Proceeds:

4.9.1 Any insured loss under the policies of insurance for Property Insurance only purchased in accordance with 4.7 will be adjusted with Contractor and made payable to Contractor as fiduciary for the insured, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 4.9.2 shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

4.9.2 Contractor as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen (15) days after the occurrence of loss to Contractor's exercise of this power. If such objection be made, Contractor as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Contractor as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Contractor as fiduciary shall give bond for the proper performance of such duties.

4.10 Acceptance of Bonds and Insurance; Option to Replace: If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 4 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within ten (10) days after receipt of the certificates of insurance required herein (or other evidence requested). Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's

interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

4.11 Partial Utilization, Acknowledgment of Property Insurer: If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 4.7 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

**ARTICLE 5, PRELIMINARY MATTERS**

5.1 Delivery of Insurance and Payment and Performance Bonds: Contractor shall deliver to Owner Insurance and Payment and Performance Bonds to be attached hereto as **Exhibit A**.

5.2 Copies of Documents: Owner has made available to Contractor the Contract Documents in electronic PDF via the SFD website, Questcdn.com link. Contractor may download information from this site for his use and to produce additional sets of documents.

Upon award of a contract for construction to a contractor the Architect shall pay for, coordinate printing, and distribute the final set of contract documents bearing the seal and the signature of the Architect/Engineer to the perspective parties as listed in the table.

PROJECT TYPE	DISTRICT	SCHOOL FACILITIES DIVISION	GENERAL CONTRACTOR
Component	3- Full Size Sets of Plans 3- Half Size Sets of Plans 3- Sets of Specifications	1- Full Size Sets of Plans 1- Half Size Sets of Plans 1- Sets of Specifications	10- Full Size Sets of Plans 10- Half Size Sets of Plans 10- Sets of Specifications
Elementary School	3- Full Size Sets of Plans 3- Half Size Sets of Plans 3- Sets of Specifications	1- Full Size Sets of Plans 1- Half Size Sets of Plans 1- Sets of Specifications	30- Full Size Sets of Plans 30- Half Size Sets of Plans 30- Sets of Specifications
Middle School	3- Full Size Sets of Plans 3- Half Size Sets of Plans 3- Sets of Specifications	1- Full Size Sets of Plans 1- Half Size Sets of Plans 1- Sets of Specifications	40- Full Size Sets of Plans 40- Half Size Sets of Plans 40- Sets of Specifications
High School	3- Full Size Sets of Plans 3- Half Size Sets of Plans 3- Sets of Specifications	1- Full Size Sets of Plans 1- Half Size Sets of Plans 1- Sets of Specifications	50- Full Size Sets of Plans 50- Half Size Sets of Plans 50- Sets of Specifications

5.3 Commencement of Contract Times; Notice to Proceed: The term of this contract will commence on the date when the last required signature is affixed hereto. The Contract Times will commence to run on the date stated in the Notice to Proceed given by the Owner along with this Agreement.

5.4 Starting the Work: Contractor shall start to perform the Work on the date when the Contract Times commence to run as stated in the Notice to Proceed. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

5.5 Before Starting Construction:

5.5.1 Identification of Project Representatives: The project representatives for the Owner and Contractor shall be those persons identified below. All communications regarding the execution of the Contract shall be made through these identified project representatives.

Organization	Name of Representative	Position	Phone Number	E-Mail Address
SFD				
School District				
Architect				
Contractor				

5.5.2 Contractor's Review of Contract Documents: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Architect any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Architect before proceeding with any Work affected thereby; however, Contractor shall not be liable to Owner or Architect for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

5.5.3 Preliminary Schedules: Within ten (10) business days of project award (unless otherwise specified in the General Requirements), Contractor shall submit to Architect for its timely review:

5.5.3.1 A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

5.5.3.2 A preliminary schedule of Shop Drawings and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

5.5.3.3 A preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work. Accompanied with the Schedule of Values shall be a list of subcontractors who will be awarded each component of the work comprising the value of the Contract Price. The contractor shall not at any time substitute any subcontractor in place of any subcontractor listed as part of this requirement without the prior written permission of the Owner and Architect. The list shall identify which subcontractors are a Wyoming resident subcontract, or non-resident subcontractor and further illustrating that no less than 70% of the work comprising the value of the Contract Price will be awarded to Wyoming Resident Subcontractors. The requirement of this clause may be waived in part upon a written determination that:

- (I) The work to be performed is specialized or of such a scale that it can be more suitable performed by out-of-state contractors;
- (II) The bid amounts submitted by responsible Wyoming subcontractors exceed one hundred five percent (105%) of the costs of out-of-state providers for equivalent quality of work or services;

- (III) The enforcement of the requirement would unreasonably delay completion of construction;
- (IV) There were insufficient responsible Wyoming contractors submitting bids to make the seventy percent (70%) requirement; or
- (V) If the requirement of this clause is waived in part, the remaining value of the total subcontract work to be performed for the project is subject to the requirement of clause 5.5.3.3;
- (VI) Any waiver of clause 5.5.3.3 shall be approved in writing by the director of the School Facilities Division and the chairman of the board of the School Facilities Commission.

5.6 Evidence of Insurance: Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in Article 4, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 4.

5.7 Preconstruction Conference: Before any Work at the Site is started, a conference attended by Contractor, Architect, Owner and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the preliminary schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment including time-line for submission, review and payment, and maintaining required records.

5.8 Initial Acceptance of Schedules: At least ten (10) days before submission of the first Application for Payment a conference attended by Contractor, Architect, Owner and others as appropriate will be held to review for acceptability to Architect the preliminary schedules. Contractor shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Architect. With regard to the acceptability of the preliminary schedules by the Architect:

5.8.1 The progress schedule will be acceptable to Architect if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on Architect responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

5.8.2 Contractor's schedule of Shop Drawing and Sample submittals will be acceptable to Architect if it provides a workable arrangement for reviewing and processing the required submittals.

5.8.3 Contractor's Schedule of Values will be acceptable to Architect as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

5.9 Acknowledgment that Bid Based Upon Full Examination of Contract Documents: Contractor shall certify, warrant and represent to Owner that their bid is based on a full and complete examination of the Construction Documents, including as determined necessary site examination; and that all statements, facts and representations made in all submittal documents and materials are true, correct, accurate, and complete, and may be relied upon by Owner in considering the firm's bid. Contractor by execution of the agreement represents that it understands that it is Contractor's responsibility to immediately provide updated and correct information if any of the information changes at any time. Any omission, falsification or misrepresentation made by Contractor in such documents and materials or any supplement thereto, will be sufficient grounds for failure to employ Contractor or terminate any contract with the Owner.



5.10 Compliance with Owner's Policies, Regulations, Directives, and Practices: Contractor by entering into this Agreement with the Owner consents and agrees to comply at all times with all Owner policies, regulations, directives, and practices.

5.11 Equal Opportunity Employer and Non-Discrimination: Contractor by execution of this agreement certifies that Contractor is an equal opportunity employer and actively recruits a well-qualified and diverse staff including minority applicants as well as historically underutilized business subcontractors, and does not discriminate against any employee or applicant for employment or subcontractor by reason of race, color, national origin, religion, marital status, sex, age, disability or sexual orientation. By submitting a bid and by execution of this agreement, Contractor agrees to actively continue and implement this policy throughout any awarded project.

5.12 Contractor Residency Certification: The Contractor referenced in this Agreement is consenting to the Owner that they **ARE** submitting their bid as a Wyoming Resident Contractor.

[APPLICABLE TO THE BOX THAT IS CHECKED]

No

Yes, and my Contractor Residency Certification Number is 0509, and my bid complies with Wyoming Statute 16-6-103. The project will be awarded based on the Contractor's statement of meeting the requirements of Wyoming Statute 16-6-103. Subsequent information verifying the statute requirements have been met will be required up to and including possible audits. The audit is to confirm that the contractor has not subcontracted more than a total of 30% of the work covered by his contract to non-resident subcontractors and non-resident sub-tier contractors.

#### **ARTICLE 6, CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

6.1 Intent: The Contract Documents are complementary; what is called for by one is as binding as if called for by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

6.2 Clarifications and Interpretations: Clarifications and interpretations of the Contract Documents shall be issued by Architect as provided in the Contract Documents.

6.3 Reference Standards:

6.3.1 Standards, Specifications, Codes, Laws, and Regulations:

6.3.1.1 Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

6.3.1.2 No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Architect, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to Owner, Architect, or any of Architect's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

#### 6.4 Reporting and Resolving Discrepancies:

6.4.1 Reporting Discrepancies: If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall report it to Architect in writing at once. Contractor shall not proceed with the Work affected thereby (except in an emergency) until an amendment or supplement to the Contract Documents has been issued; provided, however, that Contractor shall not be liable to Owner or Architect for failure to report any such conflict, error, ambiguity, or discrepancy unless Contractor knew or reasonably should have known thereof.

6.4.2 Resolving Discrepancies: Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

6.4.2.1 The provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or,

6.4.2.2 The provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

#### 6.5 Amending and Supplementing Contract Documents:

6.5.1 The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

6.5.2 The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized by Change Order.

6.6 Reuse of Documents: Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with Owner: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Architect or Architect's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies on extensions of the Project or any other project without written consent of Owner and Architect and specific written verification or adaption by Architect. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### **ARTICLE 7, DATE OF COMMENCEMENT, AND SUBSTANTIAL AND FINAL COMPLETION**

7.1 Date of Commencement: The date of commencement of the Work shall be the first business day after Contractor receives a written Notice to Proceed issued by the Owner. **The Notice to Proceed shall not be issued by the Owner until the Agreement has been signed by Contractor, approved by Owner, signed by Owner's authorized representatives, and Owner and Architect have received all required payment and performance bonds and insurance, in compliance with this Contract.**

7.2 Contract Time: The Contract Time shall be measured from the date of commencement.

7.3 Substantial Completion:

7.3.1 Specified Time: Contractor shall achieve Substantial Completion of the entire Work not later than **June 28, 2018**, subject to adjustments of this Contract Time as provided in the Contract Documents.

7.3.2 Conditions Applicable to Substantial Completion: Substantial Completion is the stage in the progress of the Work when the Project Architect has determined that the Work or designated portion thereof is sufficiently complete and in working order in accordance with the Contract Documents, including but not limited to the following:

1. All project systems included in the Work or designated portion thereof have been successfully tested and are fully operational, and factory startup of equipment has been completed.
2. All required governmental inspections and certifications required of the Work have been made, approved, posted, and copies are on file with the Owner with AIA forms if required.
3. Designated initial training instruction of Owner's personnel in the operation of the project systems has been completed.
4. All the required finishes set out in the Construction Documents are in place.
5. The only remaining Work shall be **minor** in nature so that Owner can occupy the work or the applicable portion of the Work for all of its intended purposes on that date.
6. Completion of the Work by Contractor will not materially interfere with or hamper Owner's normal school operations or other intended use. Contractor must coordinate with school schedules.
7. As further condition of a determination of Substantial Completion, Contractor shall certify that all remaining Work shall be complete within thirty (30) days or Contractor shall provide a schedule for Final Completion approved in writing by Owner. In the event final completion is not achieved, liquidated damages may be reinstated.
8. Technology cabling shall be in place, tested for connectivity, cable ends terminated and labeled in accordance with the district's labeling scheme.
9. Fire alarm systems operational, tested, approved, and a graphic map installed.
10. All life safety systems, fire suppression, public address systems, and related items shall be tested and operational.
11. Electronic hardware installation is complete and operational.
12. Paved areas including, but not limited to, parking lots, driveways, curb and gutters, sidewalks, including areas required to be replaced.
13. Certificate of Compliance issued by the city or appropriate authority having jurisdiction for site work.
14. Temporary Certificate of Occupancy or Certificate of Occupancy issued by the city or appropriate authority having jurisdiction with no exceptions or outstanding items.
15. Sanitization of domestic water systems.
16. Verification of floor drains operation, free of obstructions and free-draining.
17. Removal of temporary facilities.
18. Removal of site obstructions, construction debris, and cleanup of site.
19. Submit written request for inspection to Architect and Owner.
20. Warranties will commence on date of Final Completion.
21. Receipt of approved Operations and Maintenance Manuals including product warranties.
22. Training of Staff.

7.4 Final Completion: Contractor shall achieve Final Completion of the Work of the Project by not later than thirty (30) days following the issuance of the Certificate of Substantial Completion or the date provided in Contractor's schedule for Final Completion approved in writing by Owner. The date of Final Completion is the date certified by the Project Architect that the Project Architect finds that the Work of the Project, including the work of all of Contractor's subcontractors, is acceptable under the Contract

Documents and Contractor’s contractual obligations are fully performed. The Project Architect’s certification of Final Completion shall occur (1) upon issuance by Contractor of a written notice that the Work is ready for final inspection and acceptance, and (2) review and acceptance of the Work by the Project Architect and Owner.

7.5 Failure to Complete the Work on Time: Time is of the essence in all phases of the Work as the facilities being constructed must meet the schedule for the operation of the educational program of the School District. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Contractor’s failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Contractor that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Contractor to complete the Work within the allotted or agreed extended dates of Substantial and Final Completion, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Contractor if such delay occurs. It is expressly understood that the sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys’ fees, architectural fees, Architecting fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion shall be construed as a breach of this Agreement. The requirements of this Agreement regarding liquidated damages are as follows:

7.5.1 Liquidated Damages – Failure To Meet Substantial Completion Date: It is expressly agreed as a part of the consideration inducing Owner to execute this Agreement that Owner may deduct from the Final Payment made to Contractor a dollar amount per day established by the matrix set forth below for each and every additional calendar day beyond the agreed date of Substantial Completion.

<b>Contract Range</b>	<b>Daily Liquidated Damages Charge</b>
\$0.00 - \$500,000	\$ 250.00
\$500,001 - \$1,000,000	\$ 500.00
\$1,000,001 - \$2,000,000	\$ 750.00
\$2,000,001 - \$3,000,000	\$ 1,000.00
\$3,000,001 - \$5,000,000	\$ 1,250.00
\$5,000,001 - \$7,500,000	\$ 1,500.00
\$7,500,001 - \$10,000,000	\$ 1,750.00
\$10,000,001- \$15,000,000	\$ 2,000.00
15,000,001 - \$20,000,000	\$ 2,250.00
\$20,000,001 and Greater	\$ 2,500.00

7.5.2 Liquidated Damages – Failure to Meet Final Completion Date: Timely Final Completion is an essential condition of this Agreement. Contractor agrees to achieve Final Completion of the Agreement

within thirty (30) days of the designated or extended date of Substantial Completion or by the date provided in Contractor's schedule for Final Completion approved in writing Owner. Owner and Contractor agree that should Contractor fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Contractor and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be a dollar amount per day established as set forth in paragraph 7.5.1 above. Owner may deduct from the Final Payment made to Contractor, or, if sufficient funds are not available, then Contractor shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

7.5.3 Liquidated Damages – In Addition to Other Remedies: Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Contractor for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion may run concurrently. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

## **ARTICLE 8, GENERAL EXECUTION AND PROGRESS OF THE WORK**

8.1 Schedule: Contractor shall meet the schedule established by Owner for the Work, and the Project as a whole. Owner shall cooperate with Contractor to allow Contractor to schedule and perform Contractor's Work to avoid conflict, delay in or interference with the Work of Owner, other Contractors or Owner's own forces.

8.2 Shop Drawings, Product Data, Samples and Submittals: Contractor shall promptly (within two (2) weeks of project award) submit a schedule of Shop Drawings, Product Data, samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, samples and similar submittals shall be provided by the Contractor in such sequence as to cause no delay in the Work or in the activities of Owner or other Contractors.

8.3 Schedule of Values: Contractor shall submit to Owner a Schedule of Values allocated to the various parts of the Work of this Contract, aggregating the Contract Sum, made out in such detail as required by Owner, and supported by such evidence as Owner may require. In applying for payment, Contractor shall submit an allocation of the Work covered in the Application for Payment based upon this schedule.

8.4 Periodic Progress Reports: Contractor shall furnish to Owner periodic progress reports on the Work of this Project as mutually agreed but not less than monthly, including information on the status of materials and equipment which may be in the course of preparation, manufacture or transit.

8.5 Acceptance or Rejection of Work: Contractor agrees that Owner and the Architect will each have the authority to reject Work of Contractor which does not conform to the Contract Documents. Owner's decisions in consultation with the Architect on matters relating to the quality of workmanship and aesthetic effect of the work performed by Contractor shall be final and binding on Contractor if consistent with the intent expressed in the Contract Documents.

8.6 Timely Payment by Contractor for Materials and Equipment: Contractor shall timely pay for all materials and equipment used in connection with the performance of the Work of the Project through the period covered by previous payments received from Owner or in accordance with the terms of such purchase agreements entered into by Contractor, whichever is earlier, and shall pay for labor as incurred, and shall furnish satisfactory evidence, when requested by Owner, to verify compliance with the above requirements.

8.7 Protection of the Work: Contractor shall take necessary precautions to protect the Work of other contractors from damage caused by operations under this Agreement.

8.8 Coordination of the Work: Contractor shall cooperate with Owner, other Contractors and Owner's own forces whose Work might interfere with Contractor's Work. Contractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Contract Documents, specifically noting and advising Owner of potential conflicts between the Work of Contractor and that of Owner, other Contractors or Owner's own forces.

8.9 Acceptance of Revisions in Schedule: Contractor recognizes that revisions in the planned schedule are inherent in the nature of construction. This may result in revisions to Owner's schedule of the Work during the progress of construction. Contractor agrees that Owner cannot guarantee Contractor will be able to start Work on any particular date or continue without interruption once started, provided Contractor may in such event proceed to access the delay claim process under the terms of this Agreement.

8.10 Environmental Requirements: When constructing a project involving trenching and/or other related earth excavations, Contractor shall comply with the following environmental constraints:

8.10.1 Wetlands: When disposing of excess, soil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert wetlands.

8.10.2 Floodplains: When disposing of excess, soil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert 100 year floodplain areas delineated on the latest Federal Emergency Management Agency Floodplain Maps.

8.10.3 Historic Preservation: Any excavation by Contractor that uncovers a historical or archaeological artifact shall be immediately reported to Owner. Construction shall be temporarily halted pending the notification process and further directions issued by Owner after consultation with the State Historic Preservation Officer (SHPO) or similar official.

8.10.4 Endangered Species: Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of Contractor, Contractor will immediately report this evidence to Owner. Construction shall be temporarily halted pending the notification process and further directions issued by Owner after consultation with the U.S. Fish and Wildlife Service.

## **ARTICLE 9, COMPLIANCE WITH LAWS AND REGULATIONS:**

9.1 Wyoming Residency, Bonding and Payment Statutes and Regulations: As a material term of this Agreement, Contractor shall at all times comply with all applicable federal and state statutes and any rules established by the SFD, including, but not limited to:

9.1.1 Wyo. Stat. § 16-6-707(c), requiring Contractor to comply with the residency and preference requirements imposed under Wyo. Stat. §§ 16-6-101 through 16-6-107 in the procurement of subcontractors and materials.

9.1.2 Wyo. Stat. § 16-6-112 requiring Contractor to comply with all reporting and administrative requirements including requirements relating to retainage, payment and performance bonding and default contracts.

9.1.3 Wyo. Stat. § 16-6-115 through 16-6-117 regarding final settlement and final payments to contractors and subcontractors.

9.2 Permits, Fees and Notices: Contractor shall give notices and comply with all laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Work of the Project. Contractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of Contractor's Work.

9.3 Compliance With Tax, Social Security, Unemployment and Workers' Compensation Laws and Regulations: Contractor shall comply with federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of the Contract Documents.

9.4 Equal Employment Opportunity and Verification of Immigration Status: Contractor shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs; and specifically shall comply with all requirements of the federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Wyoming, if required by state or federal law or regulation.

## **ARTICLE 10, CONTRACTOR'S RESPONSIBILITIES**

10.1 Supervision: Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but Contractor shall not be responsible for the negligence of Owner or Architect in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.

10.2 Superintendent: At all times during the progress of the Work, Contractor shall assign a competent superintendent thereto who shall not be replaced without written notice to Owner and Architect except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

10.3 Labor; Working Hours: Contractor shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld).

10.4 Services, Materials, and Equipment: Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of Owner. If required by Architect, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and

conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

10.5 Progress Schedule: Contractor shall adhere to the progress schedule established for the Project as it may be adjusted from time to time as provided below. Contractor shall submit to Architect for acceptance proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of the Article addressing changes in the Work. Such adjustments may only be made by a Change Order.

10.6 Substitutes and "Or-Equals:"

10.6.1 Generally: Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Architect for review under the circumstances described below.

10.6.1.1 "Or-Equal" Items: If in Architect's and/or Owner's discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Architect as an "or-equal" item, in which case review and approval of the proposed item may, in Architect's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

10.6.1.1.1 In the exercise of reasonable judgment Architect determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

10.6.1.1.2 Contractor certifies that: (i) there is no increase in cost to Owner; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

10.6.1.2 Substitute Items:

10.6.1.2.1 If in Architect's and/or Owner's discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, it will be considered a proposed substitute item.

10.6.1.2.2 Contractor shall submit sufficient information as provided below to allow Architect to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Architect from anyone other than Contractor.

10.6.1.2.3 The procedure for review by Architect will be as set forth in subparagraph (4), and as Contractor may decide is appropriate under the circumstances.

10.6.1.2.4 Contractor shall first make written application to Architect for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use



as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by Architect in evaluating the proposed substitute item. Architect may require Contractor to furnish additional data about the proposed substitute item.

10.6.2 Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Architect. Contractor shall submit sufficient information to allow the Architect, in Architect's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by Architect will be similar to that provided above.

10.6.3 Architect's Evaluation: The Architect will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to the subparagraphs above in this section. The Architect will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until Architect's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Architect will advise Contractor in writing of any negative determination.

10.6.4 Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

10.6.5 Expense of Substitution: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense. The Owner and Contractor shall determine if the substitute constitutes a cost or savings to the Project, and adjust the Contract amount accordingly through an appropriate change order.

#### 10.7 Concerning Subcontractors, Suppliers, and Others:

10.7.1 Contractor shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom, Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

10.7.2 Contractor shall identify all Subcontractors, Suppliers, or other individuals or entities in advance for acceptance by Owner as required in the bid documents, and Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially

or as a replacement, shall constitute a waiver of any right of Owner or Architect to reject defective Work.

10.7.3 Contractor shall be fully responsible to Owner and Architect for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Architect and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of Owner or Architect to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

10.7.4 Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

10.7.5 Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Architect through Contractor.

10.7.6 The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

10.7.7 All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Architect. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Article 4, the agreement between Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Architect, Architect's Consultants, and all other individuals or entities identified in this Agreement to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### 10.8 Patent Fees and Royalties:

10.8.1 Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Architect its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

10.9 Permits: Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary to obtain such permits and licenses for the execution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement.

10.10 Utility Connections: Contractor shall pay all charges of utility owners for connections to the Work unless otherwise provided in the Supplementary Conditions, and Owner shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

10.11 Laws and Regulations: In addition to compliance with the federal and state laws and regulations and school district policies and regulations provided in Article 9, Contractor shall assure that all of the Work is in compliance with applicable laws and regulations.

10.11.1 Contractor shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Architect shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

10.11.2 If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations to report discrepancies in the Contract Documents.

10.11.3 Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times.

10.12 Taxes:

10.12.1 Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

10.12.2 It is an expressed condition of this contract that the contractor be aware of Wyoming Statutes pertaining to sales tax, use tax, and payment of sales and use tax by contractors, and conform as required. Contractor shall be responsible for informing themselves of tax laws, Sales and Use Tax Laws, Wyoming Statutes, regulations, and interpretations as they apply to this project. The requirements under this section 10.12 include but are not limited to the following:

- .1 Obtain the applicable tax requirements from the Department of Revenue and Taxation, State of Wyoming, for the county in which the materials, goods, fixtures and furnishings and all other tangible personal property required by this project are consumed.
- .2 Report the use, installation or transfer of such property into the project as a sale by licensed vendor and pay any and all taxes due, unless this tax was already included in the purchase price paid to the supplier.
- .3 The contractor shall require each subcontractor to comply with the same statutes and provisions and shall so stipulate in any agreement or contract with them.
- .4 For additional tax information contact: Department of Revenue and Taxation, Contracts Section, 122 West 25th, Herschler Building, Cheyenne, Wyoming 82002.
- .5 Unless specified otherwise, the contract sum includes all taxes imposed prior to the Bid opening, and which are applicable to the work.

10.13 Use of Site and Other Areas:

#### 10.13.1 Staging of the Work, Use of Site and Other Areas:

10.13.1.1 Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's separate contractors, including the provisions at Contractor's cost of secure areas for the storage or staging of materials and equipment and the managing and performance of the construction of the Work. Contractor shall afford Owner and separate contractors reasonable site access and opportunity for introduction and storage or staging 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.

10.13.1.2 Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to Owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

10.13.1.3 Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

10.13.2 Removal of Debris During Performance of the Work: During the progress of the Work, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

10.13.3 Cleaning: Prior to Substantial Completion of the Work Contractor shall clean the Site and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

10.13.4 Loading Structures: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

10.14 Record Documents: Contractor shall maintain in a safe place at the Site one record copy in hard form or electronically, as preferred by the Owner, of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives; Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Architect for reference.

#### 10.15 Safety and Protection:

10.15.1 General Supervision: Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

10.15.1.1 All persons on the Site or who may be affected by the Work;

10.15.1.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and,

10.15.1.3 Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

10.15.1.4 Hazardous Material Safety Precautions And Programs:

10.15.1.4.1 In the event that either the Owner or the Contractor become aware that an area in which the work will be performed is contaminated with asbestos containing material or polychlorinated biphenyl (PCB) that party shall promptly notify the other party of the existence of the contamination and the work shall be suspended until the contamination has been removed. It shall be the Owner's responsibility to decontaminate any area where asbestos containing material or PCB levels exceed acceptable legal limits. Owner further agrees that it has established an asbestos contamination monitoring and maintenance program.

10.15.1.4.2 The Contractor by signing this Agreement, certifies that no asbestos or asbestos containing materials will be installed or used in this project in order to satisfy Federal Register, Part III, Environmental Protection Agency 40 CRF, Part 763.85 Asbestos Containing Materials in Schools; Final Rule Notice.

10.15.1.4.3 The Contractor by signing this agreement certifies and agrees that no lead or lead containing materials will be installed or used on this project.

10.15.1.4.4 Each Subcontractor shall be responsible and pay for any damage that the Subcontractor may do to the property or work of others.

10.15.2 Safety Laws and Regulations: Contractor shall comply with all applicable Laws and Regulations, and Owner policies and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any of the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Architect or Architect's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Architect has issued a notice to Owner and Contractor that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

10.15.2.1 OSHA Compliance: Contractor agrees to fully comply with the Occupational Safety and Health Act (OSHA) of 1970 and any and all regulations issued pursuant thereto, and shall meet the following requirements with regard to such OSHA compliance:

10.15.2.1.1 As a term and condition of this Agreement, Contractor shall keep and save Owner harmless from any claims or charges of any kind by reason of Contractor failing to fully comply with the Occupational Safety and Health Act of 1970 and the regulations thereto. Contractor agrees to reimburse Owner for any fines, damages, or expenses of any kind incurred by Owner by reason of Contractor's failure to comply.

10.15.2.1.2 It will be a requirement of this Agreement that Contractor must have a safety program and will abide by the safety standards of OSHA. Any fines levied by OSHA to Owner resulting from violations of the OSHA standards by Contractor will be deducted from payment for work performed.

10.15.2.1.3 Contractor will hold a weekly safety meeting and provide reports of the topics discussed to Owner, if requested. Contractor will make available on request of Owner evidence of not less than a weekly scheduled safety inspection performed by a competent person for the time in which the aforesaid Contractor is on the job to the extent of their work only.

10.15.2.1.4 Contractor agrees that if in the performance of this Agreement, it becomes necessary, convenient, advisable to remove, replace or interfere with any safety device or controls installed by Owner or another Contractor, Contractor shall notify and obtain the written authorization from Owner to remove, replace or interfere with any safety device or controls. Contractor will replace or restore such devices or controls at its own expense as soon as possible to maintain the effectiveness of such safety device or control, and not less than on a daily basis. In the event that safety devices or controls are not replaced or restored, Contractor agrees to reimburse Owner for doing so. (Safety devices herein are defined as handrails, temporary fencing, barricades, traffic control devices, etc.).

10.15.2.1.5 Contractor shall set up, arrange, coordinate and obtain all inspections for their work, as required by any authorized agency or applicable code. Arrangements for the inspection of any area, system, equipment, etc. needing testing or inspection prior to being covered up must be made by Contractor in sufficient time to allow for inspection, and Contractor shall not cover-up any area until the inspections are complete.

10.15.2.1.6 A Work Plan may be required by Owner outlining the step-by-step procedures that are necessary to accomplish the installation, including all safety considerations.

10.15.2.1.7 Contractor hereby verifies that he has notified Owner in writing of any hazardous chemicals or mixtures containing one or more hazardous chemicals which are to be provided under this Agreement. "Hazardous Chemicals" are defined as "Any chemical which is a physical hazard or health hazard." For each item to be provided by Contractor under this Agreement which is identified as a hazardous chemical, Contractor shall provide a MSDS sheet to Owner.

10.15.2.1.8 Contractor shall be solely responsible for the health and safety of its employees, agents, subcontractors and representatives. In addition, Contractor shall take all necessary and prudent safety precautions with respect to its work and shall fully and timely comply with all safety programs initiated by Owner, as well as with all applicable laws, ordinances, rules, permits, regulations and orders of any public authority for the safety of persons or property. Owner is not responsible in any manner for the safety of Contractor's work or its employees, agents or representatives.

10.15.2.1.9 If Contractor fails to correct any procedures, acts or conditions which Owner believes are unsafe within an eight (8) hour period of written notification by Owner, or any public authority, Owner may (but has no contractual obligation to do so) correct the unsafe practice and charge Contractor for all costs, direct and indirect, for correction, plus ten percent (10%) for overhead, ten percent (10%) for profit and twenty percent (20%) for a safety premium. This specifically includes, but is not limited to, the cleanup of construction debris and the replacement or installation of railings or barricades. Contractor's repeated failures to timely and satisfactorily correct unsafe procedures, acts or conditions as aforesaid shall constitute a material default upon which a termination may be based without any further or additional notice to Contractor.

10.15.3 Acts of Employees: Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, Contractor or any of its Subcontractors. As part of

that responsibility, Contractor shall enforce Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by the Contractor's employees, subcontractors, and all other persons carrying out the Contract.

10.15.4 Site Security Identification: At construction project sites located on or adjacent to an existing school building where students, staff and patrons are present, Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall contain a current photograph and the worker's full name in a typeface large enough to be seen from a reasonable distance.

10.15.5 Vehicle Parking: Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by Owner's campus School Principal. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

10.15.6 Theft Deterrence Program: Contractor shall coordinate with Owner with the institution of a theft deterrence program, if any is required in the Contract Documents, designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Contractor's and Contractor's subcontractor's forces, and to reimburse Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's subcontractor's forces' actions, omissions, or failure to secure the Work or adjoining property.

10.15.7 Exclusion of Persons With Criminal Records: By signing this Agreement, Contractor does hereby agree, certify, warrant and represent on behalf of itself, and agrees to see that each subcontractor performing the Work shall not assign any individual or agent to work on a project site located on or adjacent to an existing school building where students, staff and patrons are present any person identified as a registered sex offender under the laws of the State of Wyoming. Contractor does hereby agree on behalf of itself, and agrees to see that each subcontractor performing the Work shall authorize and give consent, and by signing an Agreement with Owner agrees to cooperate in obtaining any additional authorization or consent necessary to assure compliance with this requirement.

10.16 Safety Representative: Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

10.17 Hazard Communication Programs: Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

10.18 Emergencies: In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Architect prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Architect determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

10.19 Shop Drawings and Samples:

10.19.1 Submission of Shop Drawings: Contractor shall submit Shop Drawings to Architect for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as Architect may require and in the number of copies specified in the

Contract Documents. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Architect the services, materials, and equipment Contractor proposes to provide and to enable Architect to review and approve the information for the limited purposes required by subparagraph 10.19.5 below. All shop drawings shall be submitted, transmitted, and collectively stored in an Electronic Format that is accessible to the manufacturer, vendor, supplier, subcontractor, General Contractor, Architect, Consultants, and the Owner.

10.19.2 Submission of Samples: Contractor shall also submit Samples to Architect for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as Architect may require to enable Architect to review the submittal for the limited purposes required by subparagraph 10.19.5 below. The numbers of each Sample to be submitted will be as specified in the Specifications.

10.19.3 Use of Unapproved Shop Drawings or Samples: Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to Architect, any related Work performed prior to Architect's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

10.19.4 Submittal Procedures:

10.19.4.1 Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

10.19.4.1.1 All field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

10.19.4.1.2 All materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

10.19.4.1.3 All information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

10.19.4.1.4 Contractor shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

10.19.4.2 Each submittal shall bear a stamp or specific written indication that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

10.19.4.3 At the time of each submittal, Contractor shall give Architect specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to Architect for review and approval of each such variation.

10.19.5 Architect's Review and Approval:

10.19.5.1 Architect will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to Architect. Architect's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.



10.19.5.2 Architect's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

10.19.5.3 Architect's review and approval of Shop Drawings or Samples shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has in writing called Architect's attention to each such variation at the time of each submittal as required by and Architect has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by Architect relieve Contractor from responsibility for complying with the requirements of subparagraph 10.19.4 above.

10.19.6 Resubmittal Procedures: Contractor shall make corrections required by Architect and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. Architect shall direct specific attention in writing to revisions other than the corrections called for by Architect on previous submittals.

10.20 Continuing the Work: Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with Owner or Architect unless otherwise notified by the Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except if Contractor is permitted by the provisions of this Agreement to stop the Work or terminate the Work, or as Owner and Contractor may otherwise agree in writing.

10.21 Contractor's General Warranty and Guarantee:

10.21.1 Contractor warrants and guarantees to Owner, Architect, and Architect's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

10.21.1.1 Abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

10.21.1.2 Normal wear and tear under normal usage.

10.21.2 Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

10.21.2.1 Observations by Architect;

10.21.2.2 Recommendation by Architect or payment by Owner of any progress or final payment;

10.21.2.3 The issuance of a certificate of Substantial Completion by Architect or any payment related thereto by Owner;

10.21.2.4 Use or occupancy of the Work or any part thereof by Owner;

10.21.2.5 Any acceptance by Owner or any failure to do so;

10.21.2.6 Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Architect;

10.21.2.7 Any inspection, test, or approval by others; or

10.21.2.8 Any correction of defective Work by Owner.

10.22 Indemnification:

10.22.1 To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Architect, Architect's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

10.22.1.1 Is attributable to, arising out of, or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents;

10.22.1.2 Is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; or

10.22.1.3 Is caused in whole or in part by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

10.22.2 In any and all claims against Owner or Architect or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under subparagraph 10.22 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

10.22.3 The indemnification obligations of Contractor under subparagraph 10.22 shall not extend to the liability of Architect and Architect's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

10.22.3.1 The preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

10.22.3.2 Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

**ARTICLE 11, AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS**

11.1 Availability of Lands and Information Regarding Lands:

11.1.1 Owner Furnishing the Site: Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract

Times, or both, as a result of any delay in Owner's furnishing the Site, Contractor may make a Claim therefore.

11.1.2 Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

11.1.3 Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

11.1.4 Information Regarding Lands:

11.1.4.1 Reports and Drawings: The contract documents shall identify those reports of explorations and tests of subsurface conditions at or contiguous to the Site that the Architect has used in preparing the Contract Documents; and those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that the Architect has used in preparing the Contract Documents.

11.1.4.2 Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in this Agreement. Except for such reliance on such "technical data," Contractor may not rely upon or make any Claim against Owner, Architect, or any of Architect's Consultants with respect to:

11.1.4.2.1 The completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

11.1.4.2.2 Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

11.1.4.2.3 Any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

11.2 Subsurface or Physical Conditions:

11.2.1 **NOTICE:** If Contractor believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:

11.2.1.1 Is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided herein with regard to Subsurface and Physical Conditions is materially inaccurate; or

11.2.1.2 Is of such a nature as to require a change in the Contract Documents; or

11.2.1.3 Differs materially from that shown or indicated in the Contract Documents; or,

11.2.1.4 Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided in the Contract Documents; then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as defined herein), notify Owner and Architect in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

11.2.2 Architect's Review: After receipt of written notice from Contractor, the Architect will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Architect's findings and conclusions.

11.2.3 Possible Price and Time Adjustments:

11.2.3.1 The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work.

11.2.3.2 Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

11.2.3.2.1 Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

11.2.3.2.2 The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

11.2.3.2.3 Contractor failed to give the written notice within the time and as required above.

11.2.3.3 If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefore as provided in this Agreement. However, Owner, Architect, and Architect's Consultants shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

11.3 Underground Facilities:

11.3.1 Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Architect by Owners of such Underground Facilities, including Owner, or by others, provided that:

11.3.1.1 Owner and Architect shall not be responsible for the accuracy or completeness of any such information or data; and

11.3.1.2 The cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

11.3.1.2.1 Reviewing and checking all such information and data,

11.3.1.2.2 Locating all Underground Facilities shown or indicated in the Contract Documents,

11.3.1.2.3 Coordination of the Work with Owners of such Underground Facilities, including Owner, during construction, and

11.3.1.2.4 The safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

11.3.2 Not Shown or Indicated:

11.3.2.1 If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as defined in this Agreement), identify Owner of such Underground Facility and give written notice to that Owner and to Owner and Architect. The Architect will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

11.3.2.2 If Architect concludes that a change in the Contract Documents is required, the appropriate documentation will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefore as provided in this Agreement.

11.4 Reference Points: Owner, through the Architect, shall provide in the Contract documents the engineering surveys necessary to establish pre-construction reference points for construction which in Architect's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Architect whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

11.5 Hazardous Environmental Condition at Site:

11.5.1 Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the Scope of the Work or should have been known by Contractor by reasonable inspection of the Site. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

11.5.2 If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as defined in this Agreement); and (iii) notify Owner and Architect (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Architect concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

11.5.3 Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of

such Work stoppage or such special conditions under which Work stoppage to be resumed by Contractor, either party may make a Claim therefore as provided in this Agreement.

11.5.4 If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in this Agreement. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with the article relating to Other Work.

11.5.5 To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Architect, Architect's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this paragraph shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

11.5.6 The provisions of paragraphs above are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 12, OTHER WORK**

### **12.1 Related Work at Site:**

12.1.1 Owner may perform other work related to the Project at the Site by Owner's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

12.1.1.1 Written notice thereof will be given to Contractor prior to starting any such other work; and

12.1.1.2 If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in this Agreement.

12.1.2 Contractor shall afford each other contractor who is a party to such a direct contract and each utility owner (and Owner, if Owner is performing the other work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Architect and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

12.1.3 If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article, Contractor shall inspect such other work and promptly report to

Architect in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

12.2 Coordination:

12.2.1 If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth herein:

12.2.1.1 The individual or entity that will have authority and responsibility for coordination of the activities among the various contractors will be identified;

12.2.1.2 The specific matters to be covered by such authority and responsibility will be itemized; and

12.2.1.3 The extent of such authority and responsibilities will be provided.

12.2.2 Unless otherwise provided herein, Owner shall have sole authority and responsibility for such coordination.

**ARTICLE 13, OWNER'S RIGHTS AND RESPONSIBILITIES**

13.1 Communications to Contractor: Except as otherwise provided herein, Owner shall issue all communications to Contractor through Architect.

13.2 Replacement of Architect: In case of termination of the Architect's agreement with Owner, Owner shall appoint an Architect to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Architect.

13.3 Furnish Information and Data: Owner shall promptly furnish the requested information and data to Owner if available and appropriate.

13.4 Independent Testing: Owner shall furnish independent tests, inspections and reports required by law, the Contract Documents or deemed appropriate by the Owner, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials to be conducted by consultants retained by the Owner.

13.5 Pay Promptly When Due: Owner shall make payments to Contractor promptly when they are due.

13.6 Surveys: Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, a written legal description of the site, and services of geotechnical engineers or other consultants when the Architect or Contractor requests such services and demonstrates that they are reasonably required by the scope of the Project.

13.7 Insurance: Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 4.

13.8 Change Orders: Owner is obligated to execute Change Orders.

13.9 Limitations on Owner's Responsibilities: Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

13.10 Undisclosed Hazardous Environmental Condition: Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition as provided in this Agreement.

13.11 Owner's Milestone Dates and Equipment:

13.11.1 Owner shall establish the milestone dates for the Project, and Contractor shall be required to develop a schedule to meet the milestones dates and to meet such schedule. Owner will work with Contractor in scheduling and performing the work of the Project being performed by Owner or others, to avoid conflicts or interference in Contractor's Work and shall expedite written responses to submittals.

13.11.2 Owner's equipment will be available to Contractor only at Owner's discretion and on mutually satisfactory terms.

13.12 Communications:

13.12.1 Owner shall promptly make available to Contractor information which affects this Contract and which becomes available to Owner subsequent to execution of this Contract.

13.12.2 Owner shall not give instructions or orders directly to Contractor's employees or to Contractor's Subcontractors or material suppliers unless such persons are designated as authorized representatives of Contractor.

13.12.3 If Owner becomes aware of hazardous substances at the Project site of a type of which an employer is required by law to notify its employees are being used on the site by a Contractor or anyone directly or indirectly employed by them (other than Contractor), Owner shall, prior to harmful exposure of Contractor's employees to such substance, give written notice of the chemical composition thereof to Contractor in sufficient detail and time to permit Contractor's compliance with such laws.

13.12.4 If Owner asserts or defends a claim against Owner which relates to the Work of Contractor, Owner shall make available to Contractor information relating to that portion of the claim which relates to the Work of Contractor.

13.13 Claims by Owner:

13.13.1 Damages for delay shall be assessed against Contractor only to the extent caused by Contractor or any person or entity for whose acts Contractor may be liable, and in no case for delays or causes arising outside the scope of this Contract.

13.13.2 Owner's claims for services or materials provided Contractor shall require:

13.13.2.1 Prior written notice except in an emergency;

13.13.2.2 Written compilations to Contractor of services and materials provided and charges for such services and materials no later than the fifteenth (15<sup>th</sup>) day of the following month.

13.14 Owner's Remedies:

13.14.1 Should Contractor at any time: (i) refuse or neglect to supply sufficient and properly skilled workers; (ii) refuse or neglect to supply materials of the proper quality; (iii) fail in any respect to follow revised construction schedules; (iv) fail in any respect to complete the Work with promptness and diligence; or (v) fail in the performance of any of the covenants contained herein; and fail to correct such default or neglect with diligence and promptness within one (1) work day of written notice from Owner, then Owner may, without additional written notice and without prejudice to any other remedy, either:



13.14.1.1 Provide such labor, materials, or services or other Work as is required by this Contract and deduct the cost thereof from any money then due or thereafter to become due to Contractor under this Agreement;

13.14.1.2 Terminate this Agreement for the Work and enter upon the premises and take possession for the purpose of completing the Work included under this Agreement of all materials, tools and appliances thereon, and to employ any other person or persons to finish the Work, and to provide the materials required under this Agreement.

13.14.2 Owner shall be entitled to recover all of its expenses under this paragraph, including all labor, materials, and services (whether by Owner or others) and any other cost (including attorneys' fees) or damages incurred as a result of Contractor's default. If such expense exceeds the unpaid balance of the amount to be paid under this Agreement, Contractor shall pay the difference to Owner on demand. If this Agreement is terminated, Contractor shall not be entitled to receive any further payment under this Agreement until the Work is completed.

13.14.3 If at any time there shall be evidence of any invoice, bill, lien or claim arising from Contractor's operations under this Agreement, or any other agreement between the parties (Claim) for which Owner, a surety, or any property, might be or become liable or subject to, Owner shall have the right to retain out of any payment then due or thereafter to become due Contractor, an amount sufficient to discharge such Claim and reimburse the Contractor, Owner, and surety for all costs and expenses (including attorneys' fees) in connection with such Claim. If Contractor has failed to resolve a Claim or provide a bond to protect Owner and any surety against such Claim within thirty (30) days after written notice, Owner or a surety shall have the right to make payment on such Claim out of funds due or to become due Contractor. If no such funds are available, Contractor shall indemnify Owner and surety for all amounts any of them have in good faith paid in discharging any Claim, including any associated costs and expenses (including attorneys' fees).

#### **ARTICLE 14, ARCHITECT'S STATUS DURING CONSTRUCTION**

14.1 Representation of Interests of Owner: Architect shall represent the Owner during the construction period pursuant to the Architect's agreement with the Owner and this Article. The duties and responsibilities and the limitations of authority of Architect during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Architect.

14.2 Visits to Site:

14.2.1 Architect's On-Site Visits: Architect shall visit the site at intervals appropriate to the stage of construction to observe the progress and quality of the executed work and determine, in general, if the work is proceeding in accordance with the contract documents. In carrying out this responsibility the Architect shall make on-site inspections not less than one (1) occasion per week and on the milestone dates for phases of the Project to check the quality and quantity of work on the Project. When observing the progress of the Project or when making inspections of the work on the Project, the Architect shall not be responsible for the construction means, methods, techniques, sequences, procedures or safety precautions incident thereto. Architect's efforts shall be directed toward Owner identifying non-compliance by the Contractor with the requirements of the contract documents. Architect shall not be responsible for Contractor's failure to perform the construction work in accordance with the contract documents. During such visits and on the basis of Architect's on-site observations as an experienced and qualified design professional, Architect is responsible to inform Owner of the progress of the work, shall alert the Owner to defects and deficiencies in the work of the Contractor and may disapprove or reject work that fails to conform to the contract documents.

14.2.2 Limitation on the Architect's Responsibilities: During or as a result of Architect's visits or observations of Contractor's Work, Architect as the Owner's representative shall not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

14.3 Project Representative: [OPTIONAL – APPLICABLE ONLY IF THE BOX IS CHECKED ]. If Owner and Architect agree, Architect will furnish a Resident Project Representative to assist Architect in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided herein. If Owner designates another representative or agent to represent Owner at the Site who is not Architect's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided herein.

14.4 Clarifications and Interpretations: Architect will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as Architect may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents, such written clarifications and interpretations will be binding on Owner and Contractor. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefore as provided in this Agreement.

14.5 Authorized Variations in Work: With Owner's approval the Architect may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly.

14.6 Rejecting Defective Work: Architect will have authority to disapprove or reject Work which Architect believes to be defective, or that Architect believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Architect will also have authority to require special inspection or testing of the Work at Contractor's cost, whether or not the Work is fabricated, installed, or completed.

14.7 Shop Drawings, Change Orders and Payments:

14.7.1 In connection with Architect's authority as to Shop Drawings and Samples.

14.7.2 In connection with Architect's authority as to Change Orders.

14.7.3 In connection with Architect's authority as to Applications for Payment.

14.8 Decisions on Requirements of Contract Documents and Acceptability of Work:

14.8.1 Architect will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to Architect in writing, in accordance with the provisions of this Agreement, with a request for a formal decision.

14.8.2 When functioning as interpreter and judge under this paragraph, Architect will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Architect pursuant to this paragraph with respect to any such Claim, dispute, or other matter will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

14.9 Limitations on Architect's Authority and Responsibilities:

14.9.1 Architect will be responsible to the Owner for all duties imposed by Architect's Agreement with Owner. As between the Owner and Contractor, Owner shall be responsible for the Architect's performance of the duties imposed on Architect in this agreement.

14.9.2 Architect will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Architect will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

14.9.3 Architect will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

14.9.4 Architect's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered as part of the Final Payment process will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

14.9.5 The limitations upon authority and responsibility set forth in this paragraph shall also apply to Architect's Consultants, Resident Project Representative, and assistants.

**ARTICLE 15, CHANGES IN THE WORK**

15.1 Authorized Changes in the Work:

15.1.1 Without invalidating the Agreement and without notice to any surety, Architect, with Owner's approval, may at any time or from time to time, order additions, deletions, or revisions in the Work. Upon receipt of appropriate documentation, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

15.1.2 If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefore as provided in the Agreement.

15.2 Unauthorized Changes in the Work: Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented and approved by Owner, except in the case of an emergency or in the case of uncovering Work as provided in the Agreement.

15.3 Execution of Change Orders: The Owner, Contractor, and Architect shall execute appropriate Change Orders recommended by the architect covering:

15.3.1 Changes in the Work which are: (i) ordered by Owner, (ii) required because of acceptance of defective Work or Owner's correction of defective Work, or (iii) agreed to by the parties;

15.3.2 Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

15.3.3 Changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Architect pursuant this Agreement; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the progress schedule.

15.4 Notification to Surety: If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

15.5 Written Approval: No work is to be performed in the Change Order Directive until the Change Order document is properly and fully executed by the Contractor, Architect, and Owner and approval of and the funding for the Change Order is received by the School Facilities Division.

## **ARTICLE 16, CLAIMS**

16.1 Notice: Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to Architect and the other party to the Contract within fourteen (14) days after the start of the event giving rise thereto or reasonable discovery of the event. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the Architect and the other party to the Contract within thirty (30) days after the start of such event or reasonable discovery of the event (unless Architect allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of this Agreement. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of this Agreement. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Architect and the claimant within thirty (30) days after receipt of the claimant's last submittal (unless Architect allows additional time).

16.2 Architect's Decision: Architect will render a formal decision in writing within thirty (30) days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. Architect's written decision on such Claim, dispute, or other matter will be final and binding upon Owner and Contractor unless:

16.2.1 An appeal from Architect's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in this Agreement; or

16.2.2 If no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from Architect's written decision is delivered by Owner or Contractor to the other and to Architect within thirty (30) days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction, within sixty (60) days after the

date of such decision or within sixty (60) days after Substantial Completion, whichever is later (unless otherwise agreed in writing by Owner and Contractor), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

16.3 If Architect does not render a formal decision in writing within the time stated above, a decision denying the Claim in its entirety shall be deemed to have been issued thirty-one (31) days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

16.4 No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this Article.

## **ARTICLE 17, CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES; DELAYS**

17.1 Change of Contract Price Due to Claims or Change Orders: The Contract Price may only be changed by a Change Order. Approved Changes in the Work or accepted Claims that affect the Contract Price will be addressed through the Change Order process provided in this Agreement. Any adjustment in the Contract Price resulting from a Change in the Work or Claim will be determined as follows:

1.7.1.1 Change Order Form and Supporting Documentation: All requests for a Change Order shall be submitted by the Contractor on the form provided by the Architect. Each request for Change Order shall be accompanied by supporting documentation. Such supporting documentation shall include the following:

17.1.1.1 Labor Costs: Labor costs for employees in the direct employ of Contractor or Contractor's subcontractor actually the performing the Work of the Change Order. Such employees shall include without limitation superintendents, foremen, and other personnel employed to perform the work of the Change Order. Labor costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Labor costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto and all transportation, travel, and subsistence expenses. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

17.1.1.2 Material and Equipment Cost: Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith, cost for additional bonds, insurance, sales taxes. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner.

17.1.1.3 Contractor's Fee for Overhead and Profit: Contractor's fee for overhead and profit shall be determined as follows:

17.1.1.3.1 A mutually acceptable fixed fee; or

17.1.1.3.2 If a fixed fee is not agreed upon, then the Contractor's Fee for Overhead and Profit shall be based upon the schedule provided in the paragraphs below:

- .1 For the contractor, for work performed by the contractor's own forces, a maximum of, five (5%) percent of the cost.

- .2 For the contractor, for work performed by the contractor's subcontractor, a maximum of, five (5%) percent of the amount due the subcontractor.
- .3 For each subcontractor or subcontractor involved, for work performed by the subcontractor's or sub-subcontractor's own forces, a maximum of, five (5%) percent of the cost.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, a maximum of, five percent (5%) of the amount due the Subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with the paragraph below.
- .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over \$500.00 be approved without such itemization.
- .7 Under no circumstances shall the total mark up to the Owner exceed ten (10%) percent of the cost.

17.1.2 Negotiation of Cost of Change Order: The Owner, in consultation with the Architect, will negotiate the method of calculation of the cost of a Change Order as follows:

17.1.2.1 Increase in Contract Price: The method of calculating the increase in the Cost of the Work resulting from a Change Order shall be as follows:

17.1.2.1.1 Lump Sum: By a mutually agreed lump sum (which may include overhead and profit not necessarily in accordance with the provisions for Contractor's fee for overhead and profit below); or

17.1.2.1.2 Cost of the Work Plus Fee: Where an agreement to a lump sum is not reached the adjustment shall be determined on the basis of the Cost of the Work plus a Contractor's fee for overhead and profit (determined as provided in the provisions for calculation and verification of the Cost of the Work and Contractor's fee for overhead and profit above).

17.1.2.2 Decrease in the Contract Price: The method of calculating the decrease in the Cost of the Work and Contract Price resulting from a Change Order shall be the amount of the actual net decrease in the Cost of the Work plus an amount equal to five percent (5%) of the amount of such net decrease to compensate the Contractor for the Contractor's overhead a profit as a result of the decrease in the Cost of the Work and Contract Price.

17.1.2.3 Net Increase/Decrease in the Contract Price: When both increases and decreases are involved in any one (1) Change Order, the adjustment in Contract Price shall be calculated on the basis of the net change (increase or decrease in the Cost of the Work and Contract Price) in accordance with this section.

17.1.3 Subcontractors for the Work of Change Orders: When the Change Order requires or allows for the subcontracting of the Work independent of current subcontractors, the Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Architect, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a

fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Article.

17.1.3.1 Contractor shall not employ any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

17.1.3.2 Contractor shall identify all such Subcontractors, Suppliers, or other individuals or entities in advance for acceptance by Owner as required in the bid documents, and Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Architect to reject defective Work.

#### 17.2 Change of Contract Times:

17.2.1 The Contract Times (or Milestones) may only be changed by a Change Order. Approved Changes in the Contract Times or accepted Claims that affect the Contract Times will be addressed through the Change Order process provided in this Agreement.

17.2.2 Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article.

17.3 Delays Within Contractor's Control: Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay within the control of the Contractor, Contractor shall not be granted an extension of Contract Times (or Milestones) or amendment of the contract or contract price for additional cost of the Project due to such delay in the Work. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

#### 17.4 Delays Beyond Contractor's Control:

17.4.1 Delays Due to Adverse Weather Conditions: Contractor shall be responsible to consider and include within the Contract Price the climatic conditions of the location of the Project that may delay the Work, and Contractor shall not be granted an extension of Contract Times (or Milestones) or amendment of the contract or contract price for the additional cost of the Project due to a delay in the Work resulting in whole or in part from adverse weather conditions.

17.4.2 Delays Other Than Adverse Weather Conditions: Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Contractor for reasons other than adverse weather conditions, Contractor shall be granted an extension of Contract Times (or Milestones) and/or amendment of the contract or contract price for additional cost of the Project as provided in this Agreement.

17.5 Delays Beyond Owner's and Contractor's Control: Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both Owner and Contractor, Contractor shall be granted an extension of Contract Times (or Milestones) and/or amendment of the contract or contract price for additional cost of the Project as provided in this Agreement.

17.6 Delay Damages:

17.6.1 Delays Caused by Contractor: In no event shall Owner or Architect be liable to Contractor, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from delays caused by or within the control of Contractor;

17.6.2 Delays Caused by the Owner, Third Parties, or Acts of God: Delays beyond the control of Contractor shall include acts or neglect by Owner, Architect, acts or neglect of third parties or other contractors performing other work, fires, floods, tornados, epidemics, or acts of God.

17.6.2.1 Increase in Contract Time and Cost:

17.6.2.1.1 Written Notice to Owner of Delay: Where Contractor wishes to make Claim for an increase in the Contract Times (or Milestones) and/or amendment of the contract or contract price for additional cost of the Project due to a delay in the Work, written notice shall be prepared and delivered by the Contractor to the Owner within seven (7) days of the beginning of the delay and shall include a narrative of the cause of the delay, the effect of the delay on the progress of the work set forth on the CPM Schedule, the anticipated duration of the delay, and the estimated cost of the delay.

17.6.2.1.2 Time of Submission of Claim for Increase in Contract Time and Cost: A Claim for an increase in the Contract Times (or Milestones) and/or amendment of the contract or contract price for additional cost of the Project due to a delay in the Work shall be submitted within thirty (30) days of the last date of the claimed delay.

17.6.2.1.3 Content of Contractor's Claim: Contractor's Claim shall be based upon, and limited to, the actual cost without mark-up to the Contractor of the delay and of probable effect of delay on progress of the Work. In the case of a continuing delay only one (1) claim is necessary. No extension of time shall be granted because of hindrances or delays from any cause which is the fault of Contractor or Contractor's Subcontractors or under Contractor's control.

17.6.2.2 Provisions of Article Fair and Adequate: Contractor represents and warrants that the provisions herein contained for extension of time and adjustment of the contract or of the contract price pursuant to this Article are fair and adequate and that Contractor has an opportunity to make provision for any and all delays within the contemplation of the parties. Accordingly, it is understood and agreed that Contractor shall not have or assert any claim for damages or prosecute any suit, action, cause of action, arbitration claim, or other proceeding against the Owner for such damages arising from any delay or hindrance in the completion of the Work called for in this Agreement except as provided in this paragraph.

## **ARTICLE 18, TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

18.1 Notice of Defects: Prompt notice of all defective Work of which Owner or Architect has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided herein.



18.2 Access to Work: Owner, Architect, Architect's Consultants, other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests shall have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

18.3 Tests and Inspections: Contractor shall give the Architect timely notice of readiness of the Work for all required inspections, tests, or approvals prior to covering the Work, if applicable, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

18.3.1 Owner Paid Tests and Inspections: Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required of the Owner by the Contract Documents.

18.3.2 Contractor Paid Tests and Inspections: Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required of the Contractor by the Contract Documents. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Architect. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Architect, Contractor shall at Contractor's cost, if requested by Architect, be uncovered for observation unless Contractor has given Architect timely notice of Contractor's intention to cover the same and Architect has not acted with reasonable promptness in response to such notice.

18.4 Uncovering Work: If Owner or Architect determines that it is necessary or advisable that covered Work be observed by Owner and/or Architect or inspected or tested by others, Contractor, at Owner's or Architect's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner or Architect may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, Contractor shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of Architects, Architect's consultants, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

18.5 Stopping the Work: If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

18.6 Correction or Removal of Defective Work: Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Owner or Architect, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of Architect,

Architect's Consultants, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

18.7 Correction Period: If within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by Architect and/or Owner, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of Architect, Architect's Consultants, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed. Contractor's obligations under this paragraph are in addition to any other obligation or warranty. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose. Contractor shall confirm that its payment and performance bond provides coverage for all corrective work during the Correction Period.

18.8 Acceptance of Defective Work: If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Architect's recommendation of final payment) prefers to accept such defective Work, Owner may do so. Contractor shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of Architect, Architect's Consultants, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Architect as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Architect's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

18.9 Owner May Correct Defective Work: In the event the Architect determines that the Contractor's work is defective, the Architect shall give the Contractor notice to correct the defective work. Contractor shall within seven (7) days after written notice from Architect correct defective Work or remove and replace rejected Work as required by Architect. If the Contractor fails to correct the

defective work in accordance with this paragraph, or if Contractor fails to perform the Work in accordance with the Contract Documents within such time, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, upon seven (7) days written notice to Contractor, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph, Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Architect and Architect's Consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph. All Claims, costs, losses, and damages (including but not limited to all fees and charges of Architect, Architect's Consultant, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this paragraph will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this paragraph.

#### **ARTICLE 19, PAYMENTS TO CONTRACTOR AND COMPLETION**

19.1 Schedule of Values: Contractor's Schedule of Values will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Architect and Owner. Progress payments on account of Unit Price Work will be based on the number of units completed.

19.2 Progress Payments:

19.2.1 Applications for Payment: Contractor shall submit to Owner and, if directed, Architect, a periodic Application for Payment. The Application for Payment shall consist of the cost of the Project as set forth in the Schedule of Values. Approval of Application for Payments for such materials stored off-site shall be conditioned upon submission by Contractor of bills of sale and applicable insurance or such other procedures satisfactory to Owner to establish Owner's title to such materials, or otherwise to protect Owner's interest, including transportation to the Worksite. The extent of such statement shall be as agreed upon between Owner and Contractor. Payment shall be subject to the retainage requirements of Wyo. Stat. § 16-6-702. If an interest bearing account per Wyo. Stat. § 16-6-704 is established the account holders shall include the District, and Contractor. The Owner, Architect and Contractor will set a schedule for Submittal and Approval of Pay Applications to be followed during the preconstruction meeting.

19.2.2 Owner's Acceptance or Rejection of Applications: Promptly after receipt of each periodic Application for Payment, Architect and Owner shall certify acceptance of the application, in whole or in part, by the signing of the Architect's Certification of Payment section of the Application for Payment form, and upon such certification shall forward the application to the SFD for funding. Pursuant to Wyo. Stat. § 16-6-602, Except as provided by contract, any agency which purchases or procures goods and services from a nongovernmental entity shall pay the amount due within forty-five (45) days after receipt of a correct notice of amount due for the goods or services provided or shall pay interest from

the forty-fifth day at the rate of one and one-half percent (1 1/2%) per month on the unpaid balance until the account is paid in full, unless a good faith dispute exists as to the agency's obligation to pay all or a portion of the account.

19.2.2.1 Good Faith Dispute Regarding Application for Payment: If a good faith dispute exists as to the Owner's obligation to pay all or a portion of the amount requested in the Application for Payment and such application is rejected in whole or in part, Architect and Owner shall indicate the reasons for its rejection, and the remedial actions to be taken by Contractor in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld. If Architect and Owner and Contractor cannot agree on a revised amount then, within fifteen (15) business days after its initial rejection in part of such application, Owner shall pay directly to Contractor the certified amount for those items not rejected by Owner for which application for payment is made, less amounts previously paid by Owner and required retention. Those items rejected by Owner shall be paid by the Owner to the extent determined appropriate (1) when the reasons for the rejection have been removed, or (2) when the reasons for the rejection have been resolved through the alternative dispute resolution process as provided herein.

19.2.3 Lien Waivers and Liens:

19.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If requested by Owner, as a prerequisite for payment, Contractor shall provide partial lien and claim waivers in the amount of the Application for Payment and affidavits from its Subcontractors and Material Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall Contractor be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

19.2.3.2 Responsibility for Liens: If Owner has made payments in the time required by this agreement, Contractor shall, within thirty (30) days after filing, cause the removal of any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If Contractor fails to take such action on a lien, Owner may cause the lien to be removed at Contractor's expense, including bond costs and reasonable attorneys' fees.

19.2.3.3 Adjustment of General Contractor's Application for Payment: Owner may adjust or reject an Application for Payment or nullify a previously approved Application for Payment, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Contractor is responsible under the Agreement:

19.2.3.3.1 Contractor's repeated failure to perform the Work as required by the Contract Documents;

19.2.3.3.2 Loss or damage arising out of or relating to this Agreement and caused by Contractor to Owner or others to whom Owner may be liable;

19.2.3.3.3 Contractor's failure to properly pay subcontractors and material suppliers following receipt of such payment from Owner;

19.2.3.3.4 Third-party claims involving Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Contractor furnishes Owner with adequate security in the form of a surety bond, irrevocable letter of credit or other collateral or commitment satisfactory to Owner and sufficient to discharge such claims if established.

19.2.4 Acceptance of Work: Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

### 19.3 Substantial Completion:

19.3.1 Contractor shall notify the Architect when it considers that Substantial Completion of the Work or a designated portion to have been achieved. Architect shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or utilized for its intended use by Owner without excessive interference in completing any remaining unfinished Work by Contractor. If Architect and Owner determine that the Work or designated portion has not reached Substantial Completion, Owner, with the assistance of the Architect shall promptly compile a list of items to be completed or corrected so Owner may occupy or utilize the Work or designated portion for its intended use. Contractor shall promptly complete all items on the list.

19.3.2 When Substantial Completion of the Work or a designated portion is achieved, the Architect shall prepare and deliver to Owner and Contractor a Certificate of Substantial Completion that shall establish the date of Substantial Completion and the respective responsibilities of Owner and Contractor for interim items such as security, maintenance, utilities, insurance and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. In the absence of a clear delineation of responsibilities, Owner shall assume all responsibilities for items such as security, maintenance, utilities, insurance and damages to the Work. The Certificate of Substantial Completion shall be submitted by the Architect to Owner, for Owner's written acceptance of responsibilities assigned in the Certificate.

19.3.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

19.4 Partial Occupancy or Use: Owner may occupy or use completed or partially completed portions of the Work when (i) the portion of the Work is designated in a Certificate of Substantial Completion, (ii) appropriate insurer(s) consent to the occupancy or use, and (iii) public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. Owner shall not unreasonably refuse to accept partial occupancy.

### 19.5 Final Completion and Final Payment:

19.5.1 Final Inspection: Upon notification from Contractor that the Work is complete and ready for final inspection and acceptance, Architect, in consultation with the Owner authorized representative, shall promptly conduct a final inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

19.5.2 Final Application for Payment: When the Work is complete, Contractor shall prepare for Owner's acceptance a final Application for Payment stating that to the best of Contractor's knowledge, and based on Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

19.5.3 Wyo. Stat. § 16-6-116 Requirements: Final payment shall be made to Contractor after Contractor has submitted an application for final payment, including Final Payment Submissions, and a Certificate of Final Completion has been executed by Owner and Contractor. Such final payment shall be subject to the requirement of Wyo. Stat. § 16-6-116 providing for the publication in a newspaper of

general circulation published nearest the point at which the Work is being carried on, once a week for three (3) consecutive weeks, and also post in three (3) conspicuous places on the Work, a notice setting forth in substance, that Owner has accepted the Work as completed according to the plans and specifications and rules set forth in this Agreement between Owner and Contractor, and that Contractor is entitled to final payment. The notice shall also set forth that upon the 41<sup>st</sup> day, with the notice specifying the exact date) after the first publication of the notice Owner will pay to Contractor the full amount due under the contract.

19.5.4 Final Payment Submissions: Final payment shall be due on Contractor's submission of the following to Owner:

19.5.4.1 An affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied or to be paid with the proceeds of final payment, so as not to encumber Owner's property;

19.5.4.2 As-built drawings, manuals, copies of warranties and all other close-out documents required by the Contract Documents;

19.5.4.3 Release of any liens, conditioned on final payment being received;

19.5.4.4 Consent of any surety; and

19.5.5 Final Completion delayed – No Fault of Contractor: If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of Contractor, Owner shall pay the balance due for portion(s) of the Work fully completed and accepted. If the estimated cost of the Work not fully completed and accepted is less than the retained amount prior to payment, Contractor shall submit to Owner, and if directed, to the Architect, the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims.

19.5.6 Claims Not Reserved in Writing: Claims not reserved in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties and Defective Work.

19.5.7 Acceptance of Final Payment: Unless Contractor provides written identification of unsettled claims known to Contractor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

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

19.7 Accounting Records: The Contractor shall keep full, detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. The accounting and control systems shall be satisfactory to the Owner. The Owner, the Owner's accountants and SFD, or other representatives, shall be afforded access to the Contractors records, books, correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Contractors shall preserve these for a period of four (4) years after final payment or for such longer period as may be required by law.

## **ARTICLE 20, SUSPENSION OF WORK AND TERMINATION**

20.1 Owner May Suspend Work: At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) consecutive days by notice in writing to Contractor and Architect which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in this Agreement.

20.2 Owner May Terminate for Cause: The occurrence of any one or more of the following events will justify termination for cause:

20.2.1 Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule as adjusted from time to time);

20.2.2 Contractor's disregard of federal, state or local laws, regulations, or ordinances, School District policies, or of any public body having jurisdiction;

20.2.3 Contractor's disregard of the authority of Architect; or

20.2.4 Contractor's violation in any substantial way of any provisions of the Contract Documents.

20.2.5 If one or more of the events identified in subparagraphs 1 through 4 above occur, Owner may, after giving Contractor (and the surety, if any) seven (7) days written notice, terminate the services of Contractor, exclude Contractor from the Site, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Architect as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.

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

20.3 Owner May Terminate For Convenience:

20.3.1 Upon seven (7) days written notice to Contractor and Architect, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Contractor shall be paid (without duplication of any items):

20.3.1.1 For completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

20.3.1.2 For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

20.3.1.3 For all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

20.3.1.4 For reasonable expenses directly attributable to termination.

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

20.4 Contractor May Stop Work or Terminate: If, through no act or fault of Contractor, the Work is suspended for more than ninety (90) consecutive days by Owner or under an order of court or other public authority, or Architect fails to act on any Application for Payment within forty-five (45) days after it is submitted, or Owner fails for forty-five (45) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days written notice to Owner and Architect, and provided Owner or Architect do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in paragraph 19.2.2. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Architect has failed to act on an Application for Payment within forty-five (45) days after it is submitted, or Owner has failed for forty-five (45) days to pay Contractor any sum finally determined to be due, Contractor may, seven (7) days after written notice to Owner and Architect, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from making a Claim under this Agreement, for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor stopping the Work as permitted by this paragraph.

## **ARTICLE 21, DISPUTE RESOLUTION**

21.1 Litigation: Absent agreement of Owner and Contractor, disputes that cannot be resolved through negotiations shall be subject to litigation in a court of competent jurisdiction in the State of Wyoming.

21.2 No Mandatory Arbitration: Notwithstanding anything to the contrary in this Agreement, or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

21.3 Alternative Dispute Resolution: The parties may by mutual agreement endeavor to settle disputes by mediation. Any mediation conducted pursuant to this paragraph shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. A request for mediation shall be filed in writing with the other party to this Agreement. Any demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations.



## **ARTICLE 22, ASSIGNMENT OF THE CONTRACT**

22.1 Assignment: Once this Agreement is accepted and signed by Owner, Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. No party to the Contract shall assign the Contract as a whole without the written consent of the others. If any party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

22.2 Prohibition of Assignment of Contract by Contractor: Contractor shall not assign the Work of this Agreement without the written consent of Owner, nor subcontract the whole of this Agreement without the written consent of Owner, nor further subcontract portions of this Agreement without written notification to Owner. All Sub-subcontracts or Purchase Orders shall allow assignment to Owner in the event of termination for cause.

22.3 Assignment of Funds: Contractor shall not assign any of the funds to be received under or through this Agreement unless such Assignment has the written approval of Owner. In order to be so approved, any such assignment shall include the following language: "It is agreed the funds to be paid to the Assignee under this Assignment are subject to satisfactory performance of the Agreement under which this Assignment is made ("this Agreement") by the Assignor ("Contractor") and subject to payment of all invoices, bills, claims, or liens for services rendered or materials supplied for the performance of any portion of the Work called for in this Agreement with Owner or any other Contract between Owner and Contractor. Owner reserves the right to set-off against any funds which may be due Contractor by Owner or funds to be paid the Assignee the amount of a claim or liens arising under or through this or any other Agreement with Contractor.

## **ARTICLE 23, MISCELLANEOUS PROVISIONS**

23.1 Warranty of Examination of Construction Documents and Duty to Update Provided Information: By signing this Agreement, Contractor does hereby agree, certify, warrant and represent on behalf of itself, and agrees to see that each Subcontractor performing the Work shall also agree, certify, warrant and represent to Owner that their bids have been based on a full and complete examination of the Construction Documents, including as determined necessary site examination; and that all statements, facts and representations made in all submittal documents and materials are true, correct, accurate, and complete, and may be relied upon by Owner in considering the firm's bid. Contractor understands it is its responsibility to immediately provide updated and correct information if any of the information changes at any time. Any omission, falsification or misrepresentation made by Contractor in such documents and materials or any supplement thereto, will be sufficient grounds for failure to employ Contractor or terminate any contract with Owner. Contractor by entering into an Agreement with Owner consents and agrees to comply at all times with all Owner policies, regulations, directives, and practices.

23.2 Extent of Contract: This Contract which includes this Agreement and the other documents incorporated herein by reference represents the entire and integrated Agreement between Owner and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by Owner and Contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

23.3 Ownership and Use of Documents: The Drawings, Specifications and other documents prepared by the Project Architect and copies thereof furnished to Contractor are for use solely with respect to this Project. They are not to be used by Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of Owner and Project Architect. The Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Project Architect appropriate to and for use in the execution of their Work under the Contract Documents.

23.4 Governing Law: The Contract shall be governed by the laws of the State of Wyoming and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any dispute shall be **Campbell**, Wyoming, or, if no county is specified, then in the county in which the District's main administrative office is located.

23.5 Force Majeure: None of the parties hereto shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

23.6 Independent Contractor: Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of Owner or the State of Wyoming for any purpose. Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing Contractor or its agents and/or employees to act as an agent or representative of or on behalf of the State of Wyoming or Owner, or to incur any obligation of any kind on behalf of the State of Wyoming or Owner. Contractor agrees that no health/hospitalization benefits, workers' compensation, and/or similar benefits available to Owner or State of Wyoming employees will extend to the benefit of Contractor or Contractor's agents and/or employees as a result of this Contract.

23.7 Kickbacks: Contractor certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If Contractor breaches or violates this warranty, Owner may, at its discretion, terminate this Contract without liability to Owner, or deduct from the Contract price or consideration, or otherwise recover the full amount of any commission, percentage, brokerage, or contingency fee.

23.8 Notices: All notices or invoices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person. All notices sent via the U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

23.9 Severability: This Agreement is subject to all applicable federal and state laws, rules, and regulations. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect, and either party may attempt to renegotiate the terms affected by the severance.

23.10 No Waiver of Rights: The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

23.11 Warranty: Contractor warrants that it has the ability to perform the agreed upon services; it shall provide suitable resources to perform work in accordance with this Agreement; it will provide the agreed upon services on a timely basis; it shall perform services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently providing construction services under similar circumstances; and it is responsible for the construction of the Work of the Project in accordance with all designs, drawings, specifications, and other services furnished by Owner through the Project Architect for the Project.

23.12 Binding Effect: This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

23.13 Execution: Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

23.14 Sovereign Immunity: Contractor stipulates that Owner is a political subdivision of the State of Wyoming, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Wyoming. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

**ARTICLE 24, CONCLUSION**

This Agreement, including the Contract Documents incorporated herein, shall be binding upon and inure to the benefit of Owner and Contractor and their respective successors and assigns.

**IN WITNESS WHEREOF**, Owner and General Contractor have affixed their signatures effective on the date first written above.

The effective date of this Contract is the date of the signature last affixed to this page.

**CONTRACTOR:**

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*Name & Title (Print)* *Signature* *Date*

**SCHOOL DISTRICT:**

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*Name & Title (Print)* *Signature* *Date*

**STATE OF WYOMING, STATE CONSTRUCTION DEPARTMENT, SCHOOL FACILITIES DIVISION:**

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*Name & Title (Print)* *Signature* *Date*