

IN THE COURT OF CLAIMS OF OHIO

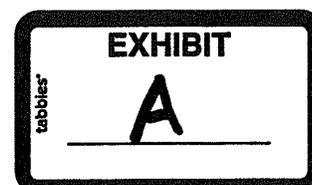
TRANSAMERICA BUILDING COMPANY, INC.,	:	
	:	Case No. 2013-00349
	:	
Plaintiff,	:	Judge McGrath
	:	
v.	:	Referee Wampler
	:	
OHIO SCHOOL FACILITIES COMMISSION, nka Ohio Facilities Construction Commission,	:	
	:	
Defendant.	:	

**AFFIDAVIT OF WILLIAM KONIEWICH IN SUPPORT OF PLAINTIFF TRANSAMERICA BUILDING COMPANY, INC.’S OBJECTIONS TO REFEREE’S DECISION DENYING TRANSAMERICA’S MOTION TO SEPARATE**

State of Ohio :  
: SS  
County of Franklin :

Upon being first duly sworn and cautioned, I, William Koniewich, state that I have personal knowledge of the facts set forth below:

1. I am the President of TransAmerica Building Company, Inc. (“TransAmerica”).
2. I have personal knowledge of the events that led to this dispute between TransAmerica and the OSFC.
3. A true and accurate copy of the Project’s General Conditions are attached hereto as Exhibit A-1.
4. In place of the OSFC, both SHP and Lend Lease were actively involved on the Project from start to finish.



5. SHP and Lend Lease regularly attended project meetings, issued frequent correspondence directly to Project participants including TransAmerica, and Lend Lease maintained a consistent presence on the Project in a work-site trailer.

6. Throughout their involvement, it was clear to all Project participants including TransAmerica that SHP and Lend Lease were acting in their capacity as representatives (or agents) of the OSFC.

7. From the OSFC's conduct throughout construction, it was clear to TransAmerica that SHP and Lend Lease were present on the Project to represent the interests of the OSFC.

8. The OSFC permitted Lend Lease and SHP to approve change orders on its behalf, which increased TransAmerica's contract amount. There are at least eleven change orders, which comprise over \$50,000, where only SHP and Lend Lease provided approval yet the OSFC allowed TransAmerica's contract to increase. In most cases, Lend Lease signed the change order on behalf of the OSFC. True and accurate copies of Change Orders authorized by Lend Lease are attached hereto as Exhibit A-2.

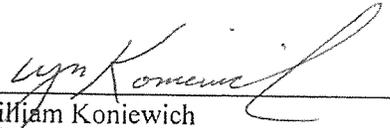
9. Through its Instructions to Bidders, the OSFC held out SHP and Lend Lease to the general public as the OSFC's representatives on the Project.

10. By issuing the Instructions to Bidders, the OSFC also induced TransAmerica to rely on SHP and Lend Lease as agents of the OSFC.

11. The Instructions to Bidders made it clear to TransAmerica that SHP and Lend Lease were representatives of the OSFC on the Project.

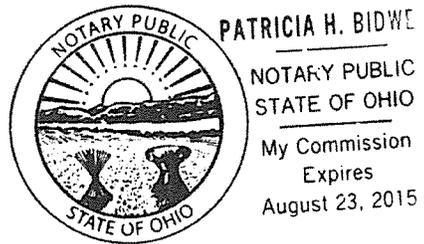
12. A true and accurate copy of the Project's Instructions to Bidders are attached hereto as Exhibit A-3.

FURTHER AFFIANT SAYETH NAUGHT

  
\_\_\_\_\_  
William Koniewich

The foregoing affidavit was acknowledged before me this 11 day of February, 2015, by William Koniewich, who is personally known to me and who did take an oath.

  
\_\_\_\_\_  
Notary Public  
My commission expires: 8-23-15



State of Ohio  
Ohio School Facilities Commission

**GENERAL CONDITIONS**

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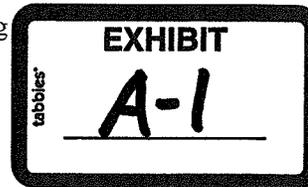
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## *ARTICLE 1 - GENERAL PROVISIONS*

### **1.1 APPLICATION AND GOVERNING LAW**

- 1.1.1 There shall be no change in these General Conditions unless so provided in the Special Conditions prepared by the Architect or the Construction Manager and approved in writing by the Commission.
- 1.1.2 The parties to the Contract shall comply with Applicable Law.
- 1.1.3 The Contract, and the rights of the parties thereunder, shall be governed by the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Contract and/or performance thereunder. The Contractor irrevocably consents to such jurisdiction.
  - 1.1.3.1 The Court of Common Pleas in the county in which the Project is located shall be the exclusive jurisdiction for any action or proceeding for any injunction or declaratory judgment concerning any agreement or performance under the Contract Documents or in connection with the Project.
  - 1.1.3.2 The Ohio Court of Claims shall be the exclusive jurisdiction for any action or proceeding by the Contractor or the Contractor's Surety for any money damages concerning any agreement or performance under the Contract Documents or in connection with the Project.
- 1.1.4 Other rights and responsibilities of the Contractor, the Architect, the Construction Manager and the Commission are set forth throughout the Contract Documents and are included under different titles, articles and paragraphs for convenience.
- 1.1.5 The Commission may maintain an action in its own name for violations of any Applicable Law or for any injury to persons or property pertaining to the Work, or for any other cause which is necessary in the performance of the Commission's duties.
- 1.1.6 To the extent that there are obligations set forth herein to be undertaken by the Construction Manager or Architect the obligation shall be that of the Commission, respectively, to cause the Construction manager or Architect to undertake such obligations. To the extent that there are obligations set forth herein to be undertaken by a Subcontractor or Material Supplier, the obligation shall be that of the Contractor to cause the Subcontractor or Material Supplier to undertake the obligation.

### **1.2 CONDITIONS OF CONTRACT**

- 1.2.1 Nondiscrimination
  - 1.2.1.1 In the hiring of employees for the performance of Work, including without limitation Work to be performed by a Subcontractor, no Contractor or Subcontractor, and no person acting on behalf of the Contractor or Subcontractor, shall, by reason of race, creed, sex, disability, or color,

discriminate against any citizen of the State in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.

1.2.1.2 No Contractor or Subcontractor, and no person acting on behalf of the Contractor or Subcontractor, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work on account of race, creed, sex, disability, or color.

1.2.1.3 The Contractor shall fully cooperate with the State Equal Opportunity Coordinator, with any other official or agency of the State or federal government which seeks to eliminate unlawful employment discrimination, and with all other State and federal efforts to assure equal employment practices under the Contract.

1.2.1.4 In the event the Contractor fails to comply with these nondiscrimination clauses, the Contract may be terminated or suspended in whole or in part, and the Contractor may be declared not responsible for further State contracts or such other sanctions as provided by law.

## 1.2.2 Affirmative Action

1.2.2.1 The Contractor shall comply with the State's Equal Employment Opportunity in the Construction Industry rules set forth in Ohio Administrative Code ("O.A.C.") Chapters 123:2-3 through 123:2-9.

1.2.2.2 The Contractor shall provide monthly reporting of its workforce by the tenth day of each month for the preceding month to the Equal Opportunity Division of the Department of Administrative Services. The link for submitting Input Form 29 is: <http://das.ohio.gov/eod/CC.htm>. The hours on Input Form 29 are to be all work hours for construction trades in the field only. The Contractor's statewide workforce hours, including both private and public projects, are to be reported on the form.

## 1.2.3 Women in Construction

1.2.3.1 The utilization goal for women workers in the performance of the Work in each trade in all geographical areas is 6.9 percent of the work hours.

1.2.3.2 The Contractor's good faith effort to comply with this goal shall be reviewed and determined according to O.A.C. Chapters 123:2-1 through 123:2-9.

## 1.2.4 EDGE Participation and Reporting

1.2.4.1 The Contractor shall participate in the "Encouraging Diversity Growth and Equity" ("EDGE") Program by contracting with, and using one or more, businesses certified as an EDGE Business Enterprise by the Department of Administrative Services as proposed for each contract by the Contractor and as approved by the Commission for use on each contract. If the Contractor is a certified EDGE business, the Contractor may include its own contract amount in the reporting.

- 1.2.4.2 The Contractor shall provide an EDGE Participation Quarterly Report for Contracts awarded with a Contract Time of 270 or more consecutive days.
  - 1.2.4.2.1 The Contractor shall provide quarterly status reports, produced by the Contractor and each applicable EDGE-certified business for the contract, indicating:
    - 1.2.4.2.1.1 The name of each EDGE-certified business;
    - 1.2.4.2.1.2 The original amount of the EDGE-certified business contract or purchase order with the Contractor;
    - 1.2.4.2.1.3 The current amount of the EDGE-certified business contract or purchase order;
    - 1.2.4.2.1.4 The amount invoiced to date;
    - 1.2.4.2.1.5 The amount paid to date; and
    - 1.2.4.2.1.6 A statement describing any substantive product or performance deficiencies.
  - 1.2.4.2.2 Quarterly reports are due on January 15, April 15, July 15, and October 15.
  - 1.2.4.2.3 The first quarterly report is due starting with the reporting month following the Contractor's contract date.
  - 1.2.4.2.4 The Contractor shall provide individualized reports for each EDGE-certified business; however, the quarterly reports may be consolidated and submitted as a singular document.
  - 1.2.4.2.5 The Contractor shall submit 1 original quarterly report to the Commission.
- 1.2.4.3 The Contractor shall provide an EDGE Participation Final Report simultaneously with its final Contractor Payment Request.
  - 1.2.4.3.1 The Contractor shall provide its EDGE Participation Final Report to EOD and to the Commission.
  - 1.2.4.3.2 The Contractor and each certified EDGE Business Enterprise shall provide in the report certification that the submitted document is a true and accurate accounting of the original contract amount paid to, and received by, each EDGE Certified Business.
- 1.2.4.4 The Contractor shall provide the quarterly report(s) and the EDGE Participation Final Report in detail and form acceptable to the Commission.

- 1.2.4.5 The Contractor shall cooperate fully with requests for additional EDGE information and documentation from the EOD or the Commission.
- 1.2.4.6 Contractor, and all subcontractors of Contractor, are encouraged to purchase materials, goods or services from certified Minority Business Enterprises or EDGE vendors.
- 1.2.4.7 Contractor shall comply with, or make a good faith effort to comply with the EDGE business enterprise goal of 5% EDGE participation for each contract, inclusive of all alternates accepted. Good faith effort will be determined pursuant to the process and factors set forth in Ohio Administrative Code Section 123:2-16-09

1.2.5 Drug-Free Workplace Program

1.2.5.1 During the Contract Time, the Contractor shall be enrolled in and remain in good standing in the Ohio Bureau of Workers' Compensation ("OBWC") Drug-Free Workplace Program ("DFWP") or a comparable program approved by the OBWC that meets the requirements specified in O.R.C. Section 153.03 ("OBWC-approved DFWP"). The Contractor's DFWP shall include placement of its employees in a pool with a random drug testing rate of at least 5%.

1.2.5.2 If the Contractor provides Subcontractors that provide labor on the Site, the Subcontractors shall be enrolled in and in good standing in the OBWC DFWP or an OBWC-approved DFWP.

- .1 Each Subcontractor shall require all lower-tier Subcontractors with which the Subcontractor is in contract for the Work to be enrolled in and be in good standing in the OBWC DFWP or an OBWC-approved DFWP prior to a lower-tier Subcontractor providing labor at the Site.
- .2 Failure of the Contractor to require a Subcontractor to be enrolled in and be in good standing in the OBWC DFWP or an OBWC-approved DFWP prior to the time that the Subcontractor provides labor at the Site shall result in the Contractor being found in breach of the Contract and that breach shall be used in the responsibility analysis of that Contractor, or the Subcontractor who was not enrolled in a program, for future contracts with the State for five years after the date of the breach.
- .3 Failure of a Subcontractor to require a lower-tier Subcontractor to be enrolled in and be in good standing in the OBWC DFWP or an OBWC-approved DFWP prior to the time that the lower-tier Subcontractor provides labor at the Site shall result in the Subcontractor being found in breach of the Contract and that breach shall be used in the responsibility analysis of that Subcontractor, or the lower-tier Subcontractor who was not enrolled in a program, for future contracts with the State for five years after the date of the breach.
- .4 Prior to authorizing a Subcontractor to commence Work on the Project, the Contractor shall obtain the Commission's approval, and shall also submit written confirmation of the Subcontractor's enrollment in the

OBWD DFWP or an OBWC approved DFWP on the Declaration of Subcontractors and Material Suppliers form to the Architect.

### 1.3 GIVING NOTICE

- 1.3.1 Notice under the Contract Documents shall be validly given if:
  - 1.3.1.1 Delivered personally to the individual or to an individual that is an employee or agent of the Person for whom the notice is intended;
  - 1.3.1.2 Delivered, or sent by registered or certified mail, postage prepaid, to the last known business address of such Person; or
  - 1.3.1.3 Sent by facsimile or email, to an individual that is an employee or agent of the Person provided the original, signed document is delivered pursuant to section General Conditions (“GC”) paragraph 1.3.1.1 or 1.3.1.2 within three (3) business days after the date of the electronic transmission.
- 1.3.2 When the Contractor, the Architect, the Construction Manager, the Commission, or the Project Administrator gives notice to one of the other four parties listed in this paragraph, it shall also simultaneously send a copy of that notice to the others.

### 1.4 CONTRACT DOCUMENTS

- 1.4.1 Intent
  - 1.4.1.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor.
  - 1.4.1.2 The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.
  - 1.4.1.3 The Contractor shall provide all labor and materials necessary for the entire completion of the Work described in the Contract Documents and reasonably inferable to produce the intended results.
  - 1.4.1.4 These General Conditions may not be superseded or amended by Drawings or Specifications unless so provided in Special Conditions prepared by the Architect and Construction Manager and approved in writing by the Commission.
  - 1.4.1.5 The Drawings govern dimensions, details and locations of the Work. The Drawings shall not be scaled. The Specifications govern quality of materials and workmanship.
  - 1.4.1.6 The organization of the Specifications in divisions, sections and articles, and the arrangement of Drawings shall not restrict the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

- 1.4.1.7 In the event of inconsistencies within or between the Contract Documents, the Contractor shall provide the better quality or greater quantity of Work, and shall comply with the stricter requirement.
- 1.4.1.8 Unless otherwise defined in the Contract Documents, words which have well-known technical or construction industry meanings are used in accordance with those recognized meanings.

## 1.5 DRAWINGS AND SPECIFICATIONS

### 1.5.1 Ownership

- 1.5.1.1 The Commission alone owns the Drawings and Specifications and every right, title, and interest therein from the moment of creation.
- 1.5.1.2 The Contractor may retain copies, including reproducible copies, of the Drawings and Specifications for information, reference, and performance of the Work.
- 1.5.1.3 In making copies of the Drawings and Specifications available, the Commission does not confer a license or grant permission for any use other than Work on the Project. Any unauthorized use of the Drawings or Specifications shall be at the sole risk of the person making the unauthorized use.

### 1.5.2 Access

- 1.5.2.1 The Construction Manager shall maintain a set of Drawings and Specifications, approved by the Department of Commerce, Division of Industrial Compliance, or such local building department as determined pursuant to OAC Section 4101:2-1-49, at a secure location at the Site.
- 1.5.2.2 The Contractor shall maintain in good order at the Site one (1) copy of all Drawings, Specifications, Addenda, approved Shop Drawings, catalog data, manufacturer operating and maintenance instructions, certificates, Warranties from manufacturers, lists of approved Material Suppliers and Subcontractors, Change Orders, Requests for Information and responses thereto and other modifications, including As-Built Drawings.
- 1.5.2.3 The Contractor shall at all times permit access to the documents described in (“GC”) subparagraph 1.5.2.2 and any Contract Documents to authorized representatives of the Commission, the Architect and the Construction Manager.

### 1.5.3 As-Built Drawings

- 1.5.3.1 The Contractor shall keep an accurate record of all approved changes made to the Drawings to show Work as actually performed where such Work varies from Work as originally shown on the Contract Documents, including the exact location and depth of underground utility lines.

- 1.5.3.2 During the performance of the Work, the Contractor shall record all changes on the Drawings, neatly in a contrasting color, noting new information not shown on the original Drawings. Failure to record all changes may cause payment to be withheld or delayed by the Commission.
- 1.5.3.3 If the Contractor uses Shop Drawings to indicate as-built conditions, the Contractor shall cross-reference the Shop Drawing sheet numbers to the corresponding sheet numbers on the Drawings. The Contractor shall note related numbers where applicable.
- 1.5.3.4 The Contractor shall keep a record of any change made to the Specifications, noting particularly any variation from manufacturer's installation instructions and recommendations.

## **1.6 TAXES**

- 1.6.1 Only those materials that ultimately become a part of the completed structure or improvement which constitutes the Project shall be exempt from State sales tax and State use tax.
- 1.6.2 The purchase, lease or rental of material, equipment, parts or expendable items such as form lumber, tools, oils, greases and fuels, which are used in connection with the Work, are subject to the application of State of Ohio sales tax and use taxes.

## **1.7 ROYALTIES AND PATENTS**

- 1.7.1 The Contractor shall pay all royalties and, license fees and shall 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 that is subject to intellectual property rights or copyrights held by other Persons.
- 1.7.2 If a particular invention, design, process, product, or device is specified in the Contract Documents and if, to the knowledge of the Architect, use of the specified item is subject to intellectual property rights of a Person other than the Contractor or its Subcontractors or Material Suppliers, calling for the payment of any license fee or royalty to others, the Architect shall disclose the existence of such rights in the Contract Documents.
  - 1.7.2.1 If the Contractor has reason to believe that use of the specified item is subject to intellectual property right protection, the Contractor shall immediately notify the Construction Manager.

## **1.8 ASSIGNMENT OF ANTITRUST CLAIMS**

- 1.8.1 By executing the Contract, the Contractor assigns, conveys and transfers to the Commission any right, title, and interest to any claims or causes of action it may have or acquire under State of Ohio or federal antitrust laws, or any other similar Applicable Law relating to any goods, products, or services purchased, procured or rendered to the Commission pursuant to the Contract.

## **1.9 USE OF DOMESTIC STEEL**

1.9.1 The Architect shall specify and the Contractor shall supply domestically produced steel products used for load bearing structural purposes as required by O.R.C. Section 153.011. The Commission reserves the right to reject any item or material provided or installed by the Contractor in violation of this requirement.

## **1.10 Payment of Prevailing Wage Rates**

1.10.1 The Contractor shall pay the prevailing wage rates of the Project locality, as issued by the Ohio Department of Commerce, Wage and Hour Bureau to laborers and mechanics performing Work on the Project.

1.10.2 The Contractor shall comply with the provisions, duties, obligations, and is subject to the remedies and penalties of Ohio Revised Code ("O.R.C.") Chapter 4115.

1.10.3 If the Contractor or its Subcontractors fail to comply with O.R.C. Chapter 4115, the Contracting Authority may withhold payment pursuant to Article 9.6 of the General Conditions. The Contractor is liable for violations committed by the Contractor or its Subcontractors.

1.10.4 The Contractor shall submit all payroll reports in compliance with the requirements of paragraph 1.14 for all of the employees of the Contractor and of the Contractor's Subcontractors.

1.10.5 By executing a Contract, the Contractor certifies that it based its Bid upon the prevailing rates of wages as ascertained by the Ohio Department of Commerce, Wage and Hour Bureau for the Project as provided in O.R.C. Sections 4115.03 through 4115.14, which are available at the Department of Commerce's website at: <http://www.com.state.oh.us>.

## **1.12 Prevailing Wage Rate Revisions**

1.12.1 The Contracting Authority shall, within 7 business days after receipt of a notice of a change in the prevailing wage rates, notify the Contractor of the change. The prevailing wage rates are available at the Ohio Department of Commerce's web site: <http://www.com.state.oh.us>.

1.12.2 The Contractor shall pay any revised wage rates issued during the term of the Contract.

## **1.13 Payroll Schedule**

1.13.1 Within 10 days of the date of the Notice to Proceed, the Contractor shall provide the Contracting Authority's Prevailing Wage Coordinator a schedule of dates during the term of the Contract on which wages shall be paid to employees for the Project.

## **1.14 Payroll Reports**

1.14.1 The Contractor shall submit payroll reports with each Contractor Payment Request, which reports shall be certified by the Contractor that the payroll is correct and complete and the wage rates shown are not less than those required by the Contract. The Contractor is responsible for submitting all payroll reports of its Subcontractors.

.1 Each payroll report shall indicate the period covered and include a list containing the name, address and social security number of each employee of the Contractor and its Subcontractors paid for the Work.

.2 Each payroll report shall list the number of hours each employee worked each day on the Project during the reporting period, the total hours each week on the Project, the employee's hourly rate of pay, job classification, hourly rate of fringe benefits, and all deductions from wages and net pay.

.3 Each payroll report shall list each fringe benefit and state if it is paid as cash to the employee or to a named plan.

.4 For each employee, each payroll report shall list the employee's gender and ethnicity, classified as Black, Hispanic, Asian Pacific Islanders, American Indians/Alaskan Native or non-minority.

.5 The Contractor and its Subcontractors shall submit apprenticeship agreements for all apprentices utilized on the Project.

## *ARTICLE 2 -THE CONTRACTOR*

### **2.1 CONSTRUCTION PROCEDURES**

- 2.1.1 The Contractor is responsible for and has control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.
  - 2.1.1.1 If the Contract Documents give instructions that affect construction means, methods, manners, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety of them and, except as stated below, shall be fully responsible for the jobsite safety of the means, methods, manners, techniques, sequences, or procedures.
  - 2.1.1.2 If the Contractor determines that the means, methods, manners, techniques, sequences, or procedures may not be safe, the Contractor shall give timely written notice to the Commission, the Architect, and the Construction Manager. The Contractor shall not proceed with that portion of the Work without further written instructions from the Architect. Any modification of the Contract shall be in accordance with Article 7.
- 2.1.2 The Contractor shall lay out and coordinate all lines, levels, elevations and measurements for all the Work, coordinate and verify existing conditions, and notify the Architect of discrepancies and conflicts before proceeding with installation or excavation.
- 2.1.3 The Contractor shall perform all cutting, fitting or patching required for the Work and shall not endanger the Project by cutting, excavating or otherwise altering the Project, or any part of it.

- 2.1.3.1 If the Contractor requires sleeves for the Work, the Contractor shall furnish and coordinate installation of the sleeves in the work of others. The Contractor is responsible for the exact location and size of all holes and openings required to be formed or built for the Work and shall coordinate with any work performed by others.
- 2.1.3.2 The Contractor shall coordinate and allow sufficient time for installation of work by others before covering or closing the applicable portion of the Work.
- 2.1.3.3 The Contractor's patching shall match and blend with the existing or adjacent surface(s). Any patching required because of faulty or ill-timed Work shall be done by, and at the expense of, the Contractor.
- 2.1.4 The Contractor shall not cut away any timber or dig under any foundation or into any wall, or other part of the Project, without the prior written approval of the Construction Manager and the Architect.
  - 2.1.4.1 Unless otherwise specified in the Contract Documents, before starting excavation or trenching, the Contractor shall determine the location of any underground utilities and notify any public authority or utility having jurisdiction over the Project and secure any required approval. The Commission assumes no liability for any damage to underground utilities caused by the Contractor.
  - 2.1.4.2 The Contractor shall backfill any excavation with the material specified and approved by the Architect.
- 2.1.5 The Contractor shall install all Work in accordance with the Contract Documents and any installation recommendations of the manufacturer, including required temperature and humidity limits for installation of the various materials.
- 2.1.6 The Contractor shall comply with all requirements and conditions of the National Pollutant Discharge Elimination System ("NPDES") general permit, including, without limitation, implementing and maintaining the control measures specified in the storm water pollution prevention plan related to the Work, maintaining records of construction activities, removing materials no longer required and taking proper action if there is a reportable quantity spill.

## **2.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS**

- 2.2.1 Before starting each portion of the Work, the Contractor shall carefully study and compare the various Contract Documents relative to that portion of the Work, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Site affecting it.
- 2.2.2 If the Contractor finds any perceived ambiguity, conflict, error, omission, or discrepancy on or between any of the Contract Documents, or between any of the Contract Documents and any Applicable Law, the Contractor, before proceeding with the Work, shall promptly submit a Request for Information ("RFI") to the Architect, through the Construction Manager, for an interpretation or clarification.

- 2.2.2.1 Before submitting any RFI to the Architect, through the Construction Manager, the Contractor shall carefully review the Contract Documents to ensure that the Contract Documents do not answer the RFI.
- 2.2.2.2 The Architect shall respond to an RFI within three (3) business days of receiving the RFI.
- 2.2.2.3 Any interpretation or clarification of the Contract Documents made by any Person other than the Architect, or in any manner other than writing, shall not be binding and the Contractor shall not rely upon it.
- 2.2.3 If the Contractor believes that it is entitled to an adjustment of the Contract Sum or Contract Time, or both, on account of clarifications or instructions issued by the Architect, through the Construction Manager, in response to a RFI, the Contractor may request an adjustment to the Contract by giving written notice under GC subparagraph 7.2.3 within seven (7) days of receiving the Architect's RFI response.
- 2.2.4 If the Contractor does not notify the Architect, through the Construction Manager, per GC subparagraph 2.2.3, the Contractor shall have accepted the RFI response without an adjustment to the Contract Sum or Contract Time.
- 2.2.5 If any change to the Work is made to accommodate unforeseen circumstances, the Construction Manager or the Architect shall initiate the appropriate action and notify the Commission.

### **2.3 CONSTRUCTION SUPERVISION**

- 2.3.1 The Contractor shall provide continuous supervision at the Project by a competent superintendent when any Work is being performed and the Contractor's superintendent shall not be involved with any work other than the Project, unless otherwise agreed by the Commission.
- 2.3.2 The Contractor's superintendent shall have responsibility and authority to act on behalf of the Contractor. All communications to the Contractor's superintendent shall be binding as if given directly to the Contractor.
- 2.3.3 The Contractor shall submit an outline of the qualifications and experience of the Contractor's proposed superintendent, including references, to the Architect and the Construction Manager within ten (10) days of the Notice to Proceed.
  - 2.3.3.1 The Commission reserves the right to reject the Contractor's proposed superintendent. Failure to notify the Contractor of such rejection within thirty (30) days of receiving the required information shall constitute notice that the Commission has no objection.
  - 2.3.3.2 If the Commission rejects the Contractor's proposed superintendent, the Contractor shall replace the superintendent with someone acceptable to the Commission at no additional cost.
- 2.3.4 The Contractor shall not replace its superintendent without prior written approval of the Commission pursuant to the following procedure.

2.3.4.1 If the Contractor proposes to change its superintendent, the Contractor shall submit written justification for the change to the Architect and the Construction Manager, along with the name and qualifications of the Contractor's proposed replacement.

2.3.4.2 The procedure provided in GC paragraph 2.3.3 shall be conducted to evaluate the Contractor's proposed new superintendent.

## **2.4 PROTECTION OF THE PROJECT**

2.4.1 The Contractor shall protect the Work from weather, and shall maintain the Work and all materials, equipment, apparatus, fixtures and other items on or adjacent to the Site free from injury or damage until Final Acceptance, or Partial Occupancy if applicable.

2.4.1.1 The Contractor shall at all times cover or protect the Work.

2.4.1.2 The Contractor, at its expense, shall remove, and replace with new Work or new item, as applicable, any Work damaged as a result of the Contractor's failure to provide coverage or protection.

2.4.1.3 The Contractor, at its expense, shall repair or replace any adjacent property, including, without limitation, roads, walks, shrubbery, plants, trees, or turf, damaged during performance of the Work.

2.4.1.4 After the date of Final Acceptance, or Partial Occupancy if applicable, the Contractor shall be relieved of its responsibility for protecting materials, equipment, apparatus, fixtures, and other items for the occupied portion of the Project.

2.4.2 Unless otherwise specified in the Contract Documents, the Contractor shall protect the Work and existing or adjacent property from damage at all times and shall erect and maintain necessary barriers, furnish and keep lighted necessary danger signals at night, and take reasonable precautions to prevent injury or damage to individuals or property.

2.4.3 The Contractor shall not load, nor permit any part of the Project to be loaded, in any manner that will endanger the Project, or any portion thereof. The Contractor shall not subject any part of the Project or existing or adjacent property to stress or pressure that endangers the Project or property.

2.4.4 The Contractor shall provide all temporary bracing, shoring and other structural support required for safety of the Project and proper execution of the Work.

2.4.5 Unless otherwise specified in the Contract Documents, the Contractor shall remove all snow and ice as required for access to the Work.

2.4.6 The Contractor shall continuously provide adequate dust control of the Site. Dust from the Site shall be controlled to prevent drifting to non-work areas, including without limitation, occupied school facilities, parking lots, buildings and adjacent properties.

2.4.7 The Contractor shall continuously provide adequate noise control of the Site. Portions of the Work that produce excessive levels of noise shall be scheduled so as not to

unduly disturb the school activities. The Contractor shall identify such portions of the Work and coordinate scheduling of those activities with the requirements of the Schools.

## **2.5 MATERIAL AND EQUIPMENT**

- 2.5.1 The Contractor shall provide new materials and equipment of the quality specified in the Contract Documents.
  - 2.5.1.1 All manufactured articles, materials and equipment shall be applied, installed, connected, created, used, cleaned and conditioned as directed in the manufacturer's latest printed instructions.
  - 2.5.1.2 No manufactured articles, materials or equipment shall be used for any purpose unless recommended by the manufacturer.
  - 2.5.1.3 Any discrepancies between specified use and manufacturer's recommendations shall be brought to the attention of the Architect and the Construction Manager by the Contractor before installation.
- 2.5.2 The Contractor shall bring to, or store at, the Site only the materials and equipment required in the Work.
  - 2.5.2.1 The Contractor shall properly store all materials and equipment brought to the Project.
  - 2.5.2.2 The Contractor shall timely remove from the Site any materials or equipment no longer required for the Work.
- 2.5.3 The Contractor shall not allow materials or equipment to damage the Project or adjacent property, nor to endanger any individual at, or near, the Site.

## **2.6 LABOR**

- 2.6.1 The Contractor shall maintain a sufficient workforce and enforce good discipline and order among its employees and the employees of its Subcontractors and Material Suppliers.
  - 2.6.1.1 The Contractor shall not permit employment of individuals not skilled in tasks assigned to them.
  - 2.6.1.2 The Contractor shall provide sufficient qualified on-site engineering and clerical project staff, in addition to the Contractor's superintendent, to process the daily Work, including without limitation, processing and coordinating Shop Drawings, correspondence, daily reports, As-Built Drawings and scheduling.
- 2.6.2 The Contractor shall dismiss from the Project any individual employed by the Contractor, or the Contractor's Subcontractors and Material Suppliers, who is found by the Commission, pursuant to a recommendation from the Construction Manager or

the Architect, in their sole discretion, to be incompetent, guilty of misconduct, or detrimental to the Project.

- 2.6.3 The Contractor shall employ all legal efforts to minimize the likelihood or effect of any strike, work stoppage or other labor disturbance. Informational pickets shall not justify any work stoppage.

## **2.7 SAFETY PRECAUTIONS**

- 2.7.1 The Contractor shall take reasonable precautions and shall be responsible for the safety of individuals on the Project.
- 2.7.2 The Contractor shall pay any fine or cost incurred because of the Contractor's violation, or alleged violation, of Applicable Law.
- 2.7.3 The Contractor certifies that the Contractor and any of its Subcontractors performing Work:
  - 2.7.3.1 Have implemented a written safety program;
  - 2.7.3.2 Have caused each member of its jobsite workforce to complete an Occupational Safety and Health Administration ("OSHA") 10 or 30 hour Construction Course; and
  - 2.7.3.3 Have caused at least one Project supervisor to complete an OSHA 30 Hour Construction Course.
- 2.7.4 Before starting any Work:
  - 2.7.4.1 The Contractor shall submit to the Construction Manager a copy of the Contractor's site-specific safety plan and safety manuals.
  - 2.7.4.2 The Construction Manager shall provide and inform the Contractor and each Separate Contractor of methods and equipment for protecting the Project, other property, and individuals from fire damage in accordance with Applicable Law.
- 2.7.5 Methods and equipment for protecting individuals and the Project shall be subject to inspection and approval of the appropriate authority having jurisdiction over the Site.
- 2.7.6 Work Stoppage Due to Hazardous Materials
  - 2.7.6.1 If the Contractor encounters materials the Contractor reasonably believes to be, or contain, a Hazardous Material, which has not been rendered harmless, the Contractor shall immediately stop Work in the affected area and verbally report the condition to the Architect, the Construction Manager, the Commission, and within one (1) business day deliver written notice of the condition to the Architect, the Construction Manager and the Commission. A licensed abatement Contractor shall issue a written report of the condition to the Commission and the Architect and remove the material or render it harmless as directed.

2.7.6.2 The Contractor shall resume Work in the affected area upon written notice from the Construction Manager that (1) the suspect material was evaluated and found not to be or contain a Hazardous Material, or (2) the suspect material has been removed or rendered harmless.

2.7.6.3 If the Contractor knowingly or negligently proceeds with the Work in an area where a Hazardous Material exists and has not been rendered harmless, the Contractor shall be solely responsible for all related claims, damages, losses, and expenses, including without limitation, attorneys fees, arising out of or resulting from performing the Work in the affected area.

2.7.6.3 The term "rendered harmless" shall mean that the level of exposure is less than any applicable exposure standards set forth in Applicable Law.

#### 2.7.7 Material Safety Data Sheets

2.7.7.1 The Contractor shall identify any material it uses at the Site with a Material Safety Data Sheet ("MSDS").

2.7.7.2 Before starting any Work or bringing materials to the Site, the Contractor shall submit to the Construction Manager a notebook containing all of its applicable MSDS.

2.7.7.3 The Construction Manager shall maintain all MSDS notebooks at the Site for the duration of the Project.

## 2.8 CONSTRUCTION FACILITIES, UTILITIES, AND EQUIPMENT

### 2.8.1 Facilities

2.8.1.1 The Contractor shall provide and maintain in a clean condition suitable temporary facilities, equipment, services, and enclosed storage for its use at the Site.

2.8.1.2 The Construction Manager shall provide and maintain in a clean condition at the Site:

- .1 Suitable facilities, equipment, and services for use by the Architect and the Construction Manager;
- .2 Adequate space, equipment, and furnishing to conduct progress meetings, and store approved documents and permits; and
- .3 Adequate sanitary facilities for use by all Persons at the Site.

### 2.8.2 Environmental Controls

2.8.2.1 The Contractor shall protect its Work and materials from weather and damage from heat, cold, and humidity.

2.8.2.2 Until the permanent HVAC systems are complete and available for use:

- .1 The Contractor responsible for the permanent HVAC system (“HVAC Contractor”) shall make arrangements and pay for installation and maintenance of temporary heating facilities.
- .2 The Contractor shall pay the costs incurred in operating the temporary heating facilities.

2.8.2.3 When the permanent HVAC systems are completed and available for use:

- .1 The HVAC Contractor shall start up and maintain operation of the permanent HVAC system, and shall promptly remove temporary heating facilities; and
- .2 If the Project consists entirely of new construction, the Contractor shall pay the costs of operating the permanent HVAC system until Final Acceptance, or Partial Occupancy if applicable.
- .3 If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, the Schools shall pay the costs of operating the permanent HVAC system.

2.8.2.4 Following the date of Final Acceptance, or Partial Occupancy if applicable, the Contractor shall not be responsible for the cost of operating the permanent HVAC system for the occupied portion of the Project.

### 2.8.3 Water and Drainage

2.8.3.1 The Contractor shall provide water necessary for the Work until the permanent water system is available for use.

2.8.3.2 The Contractor shall provide temporary drainage and dewatering necessary for the Work and shall employ pumps, trenches, drains, sumps, and other necessary elements required to provide satisfactory working conditions for the protection, execution, and completion of the Project.

2.8.3.3 The Contractor responsible for the permanent plumbing system (“Plumbing Contractor”) shall make arrangements and pay for installation and maintenance of temporary plumbing facilities until the permanent plumbing systems are available for use.

2.8.3.4 When the permanent plumbing system is complete and available for use:

- .1 The Plumbing Contractor shall start up and maintain operation of the permanent plumbing systems, and shall make arrangements and pay for removal of temporary water facilities; and
- .2 If the Project consists entirely of new construction, the Contractor shall pay the costs of water consumed and sewerage charges until Final Acceptance, or Partial Occupancy if applicable.

.3 If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, the Schools shall pay the costs of water consumed and sewerage charges.

2.8.3.5 Following the date of Final Acceptance, or Partial Occupancy if applicable, the Contractor shall not be responsible for the costs of water consumed and sewerage charges for the occupied portion of the Project.

#### 2.8.4 Electric Service

2.8.4.1 The Contractor responsible for the permanent electric service (“Electrical Contractor”) shall provide temporary light and power and shall; pay the charges for temporary electric service installation, and removal if required.

.1 The Electrical Contractor shall not be responsible for electric service requirements of other Contractors related to temporary hoists, cranes, welding equipment, or elevators.

.2 If the Contractor requires these services, the Contractor shall subcontract with a licensed contractor for the service requirements and shall pay the costs of the services.

2.8.4.2 If the Project consists entirely of new construction, the Contractor shall pay the charges for energy consumed until Final Acceptance of the Project, or Partial Occupancy if applicable.

2.8.4.3 If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, the Schools shall pay the cost of energy consumed.

2.8.4.4 Following the date of Final Acceptance, or Partial Occupancy if applicable, the Contractor shall not be responsible for the cost of energy consumed for the occupied portions of the Project.

#### 2.8.5 Hoisting Facilities

2.8.5.1 Each Contractor shall erect and maintain any hoisting equipment required for its Work in coordination with the Construction Manager and the Electrical Contractor.

2.8.5.2 If the electric service requirements of hoisting facilities differ from that available at the Site, the Contractor requiring use of the hoisting facilities shall provide and pay for all necessary connections.

2.8.5.3 A Contractor requiring use of hoisting facilities, after the Project is enclosed, shall transport Persons and materials required for its Work.

2.8.5.4 If a permanent elevator is identified in the Contract Documents to be used for hoisting materials or personnel during construction, the Contractor responsible for the elevator shall furnish an extended warranty and service

contract in effect until the expiration of the period for correction described in GC paragraph 2.16.

## **2.9 BUILDING AND TRADE PERMITS AND LICENSES**

### **2.9.1 Plan Approval**

2.9.1.1 The Architect shall secure the required structural, plumbing, HVAC, and electrical plan approvals from the local certified building department having jurisdiction.

2.9.1.2 The Contractor shall schedule and attend all intermediate and final inspections required for any permit applicable to the Work. The Contractor shall schedule the State Fire Marshal or local fire authority for the life safety inspection for occupancy permits. The Contractor shall give the Architect, the Construction Manager, and the Commission reasonable notice of the dates and times arranged for inspections.

### **2.9.2 Trade Permits and Licenses**

2.9.2.1 The Contractor shall obtain, maintain, and pay for any permit or license applicable to the Contractor's particular trade.

### **2.9.3 Local Permits**

2.9.3.1 Unless otherwise specified in the Contract Documents, the Contractor shall secure and pay for any permits, licenses, capacity charges, or tap fees required by local authorities having jurisdiction over the Project. The Contractor shall give the Architect, the Construction Manager, and the Commission reasonable notice of the dates and times arranged for inspections.

### **2.9.4 National Pollutant Discharge Elimination System ("NPDES") Storm Water General Permit**

2.9.4.1 The Architect shall secure the NPDES general permit by submitting a notice of intent application form to the Ohio Environmental Protection Agency at least forty-five (45) days prior to the start of construction.

2.9.4.2 The Architect shall prepare and certify a storm water pollution prevention plan to provide sediment and erosion controls at the Project.

2.9.4.3 The Architect shall prepare and process the required notice of termination prior to Contract Completion.

## **2.10 TESTS AND INSPECTIONS**

2.10.1 Unless otherwise specified in the Contract Documents, the Contractor shall apply, secure, and pay for any inspection, testing or approval required by the Contract Documents or Applicable Law. The foregoing obligation also extends to any required repeat inspections and tests.

- 2.10.1.1 The Contractor shall coordinate with and give the Architect, the Construction Manager and the Commission reasonable notice of the dates and times arranged for such inspection, testing or approval.
- 2.10.1.2 Within five (5) days after completion of an inspection, testing, or approval, the Contractor shall provide an original report of the inspection, testing or approval to the Architect, through the Construction Manager, for approval.
- 2.10.2 If the Architect or the Construction Manager determine that any portion of the Work requires special inspection, testing or approval not otherwise required under the Contract Documents, the Architect or the Construction Manager may instruct the Contractor in writing to order such special inspection, testing or approval, or the Architect or the Construction Manager may make the arrangements for same.
  - 2.10.2.1 If such special inspection, testing or approval reveals Defective Work, the Contractor shall pay all associated costs. Those costs may include, but are not limited to:
    - .1 The cost of the special inspection, testing, or approval;
    - .2 The cost of additional special inspections, testing, or approvals to evaluate remedial Work;
    - .3 The cost of correcting the Defective Work; and
    - .4 All related Commission-incurred fees and charges of engineers, architects, attorneys, and other professionals.
  - 2.10.2.2 If such special inspection, testing or approval reveals that the Work complies with the Contract Documents, the Contractor shall be paid for all associated costs by appropriate Contract modification.
- 2.10.3 Neither the observations of the Architect or the Construction Manager in the administration of the Contract, nor any inspection, test, or approval by Persons other than the Contractor shall relieve the Contractor from the Contractor's obligation to perform the Work in conformity with the Contract Documents.
- 2.10.4 If the Contractor is aware of a need for inspection, testing, or approval, or of a need to have any inspection, testing, or approval completed by a particular time to avoid delay, the Contractor shall timely communicate such information to the Architect and the Construction Manager.
- 2.10.5 Except as described under GC subparagraph 2.10.2, the Commission shall pay for any inspection, testing, or approval that did not become a requirement until after the Contract was awarded.

## **2.11 PROGRESS CLEANING**

- 2.11.1 The Contractor shall remove all waste materials and rubbish attributable to the Work to an appropriate disposal location designated by the Construction Manager.

- 2.11.2 The Contractor shall perform daily broom cleaning of hard flooring surfaces in the area of the Work.
- 2.11.3 The Contractor shall, at the end of each working day or as directed by the Architect or the Construction Manager, remove all waste materials and rubbish from the disposal location designated by the Construction Manager.
- 2.11.4 The Contractor shall, as required for the Project or as directed by the Architect or the Construction Manager, remove any waste materials or rubbish from areas adjacent to the Project.
- 2.11.5 If the Contractor fails to clean up during the progress of the Work, the Commission may clean up on behalf of the Contractor and at the Contractor's sole expense.
- 2.11.6 If the Contractor fails to maintain the areas adjacent to the Project clean and free of waste materials and rubbish, upon written notification by the Architect or the Construction Manager, the Commission may also direct the local jurisdiction responsible for the area to have the area cleaned to its satisfaction at the Contractor's expense.
  - 2.11.6.1 Upon recommendation from the Architect or the Construction Manager, the Commission may deduct the cleaning costs from payments then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to the Commission.
  - 2.11.6.2 If the Architect or the Construction Manager determine that the cleaning is attributable to the Contractor and to one or more Separate Contractors, the Architect or the Construction Manager shall also recommend allocation of the cleaning costs as the Architect or the Construction Manager deem appropriate. If the Architect or the Construction Manager cannot or do not recommend allocation of the costs, the Commission shall allocate the costs as the Commission deems appropriate in its sole discretion.
  - 2.11.6.3 The decision of the Commission shall be final.

## **2.12 SUBSTITUTIONS AFTER BID OPENING**

- 2.12.1 The Architect shall consider Requests for Substitutions after the bid opening only when the Contractor can conclusively demonstrate to the Architect one of the following conditions:
  - 2.12.1.1 The specified Basis of Design Components, Acceptable Components, or previously-approved Substitutions, through no fault of the Contractor or the Contractor's Subcontractors or Material Suppliers, are not available; or
  - 2.12.1.2 The specified Basis of Design Components, Acceptable Components, or previously-approved Substitutions will not perform as designed or intended.
- 2.12.2 The Contractor's incorporation of unapproved Substitutions in the Work shall constitute Defective Work.

## **2.13 EXPLOSIVES AND BLASTING**

- 2.13.1 The Contractor shall not conduct blasting on, or bring explosives to, the Site without the prior written approval of the Commission, and other authorities having jurisdiction.
- 2.13.2 The Contractor shall perform all blasting, storing and handling of explosives as required under Applicable Law.
- 2.13.3 The Contractor shall carry appropriate liability insurance for its blasting and explosives storage and handling operations, and shall be responsible for any damages to persons or property resulting from any blasting operation. Immediately upon request, the Contractor shall deliver evidence of such insurance to the Commission.

## **2.14 EMERGENCY**

- 2.14.1 In the event of an emergency affecting the safety of individuals, the Project or other property, the Contractor, without special instruction or authorization, shall act to prevent any threatened damage, injury or loss.
- 2.14.2 If the Contractor believes that it is entitled to an adjustment of the Contract Sum or Contract Time, or both, on account of its actions in response to an emergency, the Contractor may request an adjustment to the Contract by giving written notice under GC subparagraph 7.2.3.

## **2.15 UNCOVERING THE WORK**

- 2.15.1 If the Contractor covers any Work contrary to the requirements of the Contract Documents or contrary to the written request of the Architect or the Construction Manager, the Contractor shall, if required by the Architect or the Construction Manager in writing, uncover that Work for observation, correct it if not in conformity with the Contract Documents, and recover it at the Contractor's expense and without adjustment of the Contract Time.
- 2.15.2 If the Contractor covers Work in accordance with the Contract Documents and not contrary to a request from the Architect or the Construction Manager for an opportunity to observe the Work prior to covering, the Architect or the Construction Manager may request that the Contractor uncover that Work.
  - 2.15.2.1 If the uncovered Work is Defective Work, the Contractor shall pay all costs of uncovering, correcting, and recovering the Work and shall not be entitled to an adjustment of the Contract Time, unless the Commission finds, in its sole discretion, that the Defective Work was caused by a Separate Contractor.
  - 2.15.2.2 If the uncovered Work is not Defective Work and the Contractor believes that it is entitled to an adjustment of the Contract Sum or Contract Time, or both, on account of the uncovering and recovering of the Work, the Contractor may request an adjustment to the Contract by giving written notice under GC subparagraph 7.2.3.

## 2.16 CORRECTION OF THE WORK

- 2.16.1 The Contractor shall promptly correct any Work rejected by the Architect or the Construction Manager or Work that is Defective Work, whether discovered before or after Final Completion, or Partial Occupancy, as applicable, and whether or not fabricated, installed, or completed. The Architect shall specify in a written notice to the Contractor the time within which the Contractor shall correct the Work.
- 2.16.2 After Final Completion:
- 2.16.2.1 In addition to the Contractor's other obligations under the Contract Documents, if within 1 year after the date of Final Completion of the Work any of the Work is found to be Defective Work, the Contractor shall correct it promptly after receipt of written notice from the Architect, the Construction Manager, the School District Board, or the Commission to do so, unless the Commission has previously and knowingly accepted the Defective Work in writing.
- 2.16.2.2 If the Contractor fails to correct the Defective Work promptly after receiving the notice to do so, the Owner may correct it without giving further notice to the Contractor.
- 2.16.2.3 The 1-year period for correction of Work shall not be extended by corrective Work performed by the Contractor under this GC subparagraph 2.16.2.
- 2.16.2.4 The 1-year period for correction of Work:
- .1 Relates only to the Contractor's specific obligation to correct the Work;
  - .2 Does not establish a period of limitation with respect to any of the Contractor's other obligations under the Contract Documents;
  - .3 Has no relationship to the time within which the Commission may seek to enforce the Contract; and
  - .4 Does not establish a period of limitation with respect to the commencement of litigation to establish the Contractor's liability under the Contract or otherwise.
- 2.16.2.5 One month prior to the end of the 1-year period for correction of Work, the Contractor shall attend a walk-through of the Project scheduled by the Construction Manager, which shall also be attended by the Architect, Commission, and Construction Manager.
- .1 Following the walk-through, the Construction Manager, with the assistance of the Architect, shall submit written notice to the Commission of any Defective Work. Such Defective Work shall be remedied in accordance with GC paragraph 2.16.
- 2.16.3 Responsibility for Costs of Correction:

2.16.3.1 The Contractor shall pay all of the costs and damages associated with the correction of the Work. Those costs and damages may include, without limitation, the related fees and charges of engineers, architects, attorneys, and other professionals; the cost of correcting or replacing adjacent work; and any consequential damages. The Commission may deduct the costs and damages it incurs from payments then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to the Commission.

## **2.17 INTERRUPTION OF EXISTING SERVICES**

- 2.17.1 Whenever it becomes necessary to interrupt existing services in use by the Schools including without limitation, sewer, water, gas and steam lines, electric, telephone or cable service, the Contractor shall continue the associated Work on a 24 hour per day basis until that Work is completed and the service restored, or until an alternate time required by the Commission.
- 2.17.2 Before beginning such Work, the Contractor, through the Construction Manager, shall apply in writing to, and receive approval in writing from, the Commission and the authority having appropriate jurisdiction over the Project, to establish a time when interruption of the service will cause a minimum of interference with the activities of the Schools.

## **2.18 INDEMNIFICATION FOR INJURY OR DAMAGE**

- 2.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Commission, the Construction Manager and the Architect, their respective officers, members, officials, consultants, agents representatives, and employees, in both individual and official capacities (individually "Indemnified Party"; collectively "Indemnified Parties"), from and against all claims, damages, losses, and expenses (including the fees and charges of engineers, architects, construction managers, separate contractors, attorneys, and other professionals), whether direct, indirect, or consequential arising out of or in connection with the Project.
- 2.18.1.1 In the event of any injury, death, loss, damage, or related claims, the Contractor shall give prompt written notice thereof to the Commission.
- 2.18.2 The Contractor's obligations under GC paragraph 2.18.1 shall not extend to the liability of the Architect, the Architect's consultants, agents or employees for negligent preparation or approval of Drawings, Specifications, Change Orders, opinions, and any other responsibility of the Architect, except to the extent covered by the Contractor's insurance.
- 2.18.3 The Contractor's obligations under GC paragraph 2.18.1 shall not negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to an Indemnified Party.
- 2.18.4 The Contractor's obligations under GC paragraph 2.18.1 shall not be limited by a limitation on the amount or type of damages, compensation, or benefits payable under

workers' compensation acts, disability benefit acts or other employee benefit acts, or any insurance policy provided or required in connection with the Project.

- 2.18.5 Without limiting the generality of the foregoing, the Contractor shall indemnify, defend and hold the Commission harmless from and against claims, losses, damages and expenses (including attorneys' fees) arising out of or related to allegations, claims or public lien claims by Subcontractors and Material Suppliers for non-payment.

## **2.19 INDEMNIFICATION FOR PATENT OR COPYRIGHT USE**

- 2.19.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Indemnified Parties from and against all claims, damages, losses and expenses (including the fees and charges of engineers, architects, construction managers, attorneys, and other professionals), direct, indirect, or consequential arising out of the Contractor's infringement of intellectual property rights.

## **2.20 INDEMNIFICATION FOR USE OF ELECTRONIC FILES**

- 2.20.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Indemnified Parties from and against all claims, damages, losses, and expenses (including, but not limited to, the fees and charges of engineers, architects, attorneys, and other professionals) arising out of, or related to the Contractor's, or any other Person's use of electronic files, including, but not limited to, Computer-Aided Design ("CAD") or Building Information Modeling ("BIM") files (collectively "Electronic Files").

2.20.1.1 These Electronic Files are provided solely for the Contractor's convenience and use related to the Project. Any use of the Electronic Files shall be at the sole risk of the Contractor.

2.20.1.2 The Commission alone owns the Electronic Files and every right, title, and interest therein from the moment of creation.

2.20.1.3 The Electronic Files are not products.

2.20.1.4 The Contractor shall not use the Electronic Files for any purpose other than as a convenience for preparing Shop Drawings, Coordination Drawings, Record Drawings, or fabrication data for components, systems, and assemblies intended solely for use on the Project.

2.20.1.5 The Commission and the Architect make no warranties, either express or implied, of the merchantability or fitness of the Electronic Files for any particular purpose.

2.20.1.6 The Contractor understands and accepts that the Electronic Files may deteriorate or be inadvertently or otherwise modified without authorization of the Commission or the Architect.

2.20.1.7 The Commission and the Architect make no representations as to compatibility, usability, or readability of the Electronic Files resulting from the use of software, application packages, operating systems, or computer hardware differing from those used to create the Electronic Files.

- 2.20.1.8 In the event of a conflict between the Contract Documents and the Electronic Files, the Contract Documents shall control, take precedence over, and govern the Electronic Files.
- 2.20.1.9 The Contractor alone is responsible to check, verify, and otherwise confirm the accuracy of data on the Electronic Files.
- 2.20.1.10 The Contractor shall not make any claims and hereby waives, to the fullest extent permitted by law, any claims or causes of action of any nature against the Indemnified Parties, which may arise out of, or in connection with, the use of the Electronic Files.

## **2.21 WARRANTY**

- 2.21.1 The Contractor warrants to the Commission that all materials and equipment furnished under the Contract shall be new and of good quality unless otherwise required or permitted by the Contract Documents, that the Work shall be free from defects, and that the Work shall conform to the requirements of the Contract Documents. Work not conforming to those requirements, including Substitutions not properly approved and authorized, may be considered Defective Work by the Commission in its sole discretion. If required by the Architect or the Construction Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 2.21.2 The warranty provided in this GC paragraph 2.21 shall be in addition to, and not in limitation of, any other guarantee, warranty, or remedy provided by law or by the Contract Documents.
- 2.21.3 The Contractor shall, prior to installing material or equipment that is subject to a warranty, provide a copy of that warranty to the Architect, through the Construction Manager, for review and approval.
- 2.21.4 If Defective Work becomes apparent within any applicable warranty period, the Commission shall promptly provide written notice to the Contractor, with copies simultaneously provided to the Architect, Construction Manager, and Commission.
  - 2.21.4.1 Within ten (10) days of receipt of the notice, the Contractor shall visit the Project in the company of one or more representatives of the Commission to determine the extent of the Defective Work. The Contractor shall promptly repair or replace the Defective Work, including all adjacent Work damaged as a result of such Defective Work or as a result of remedying the Defective Work, whether or not the Contractor originally provided such adjacent Work.
  - 2.21.4.2 If the Defective Work is considered by the Commission to be an emergency, the Commission may require the Contractor to visit the Project within one (1) day of receipt of the notice.
  - 2.21.4.3 The Contractor shall be fully responsible for the cost of temporary materials, facilities, utilities or equipment required during the repair or replacement of the Defective Work.

- 2.21.5 If the Contractor does not promptly repair or replace Defective Work, the Commission may repair or replace such Defective Work and charge the cost thereof to the Contractor or the Contractor's Surety.
- 2.21.6 Work repaired or replaced by the Contractor shall be inspected and accepted by the Commission and shall be guaranteed by the Contractor for one (1) year from the date of acceptance of the corrective Work by the Commission.

## *ARTICLE 3 - THE ARCHITECT*

### **3.1 PROJECT OVERSIGHT**

- 3.1.1 The Architect shall notify, advise and consult with the Construction Manager, the Commission and shall protect the Commission against Defective Work throughout the completion of the Project, which includes a period of 1 year after Final Acceptance.
  - 3.1.1.1 The Architect shall designate a representative, subject to the Commission's approval, to attend to the Project, as required by the Agreement for Professional Design Services, to observe and check the progress and quality of the Work, and to take such action as is necessary or appropriate to achieve conformity with the Contract Documents.
  - 3.1.1.2 The Architect shall have its consultants attend the Project at such intervals required by the Agreement for Professional Design Services, or as may be deemed necessary by the Commission, to review the Work in order to achieve the results intended by the Contract Documents.
- 3.1.2 The Architect shall have the authority to disapprove or reject any item of Work that is Defective work, or that the Architect believes will not produce a Project that conforms to the Contract Documents, or that will prejudice the integrity of the design concept of the Project as a functioning whole as indicated by the Contract Documents. The Architect shall immediately notify the Commission, through the Construction Manager, at any time the Architect disapproves or rejects an item of Work.
- 3.1.3 The Architect shall not be responsible for construction means, methods, techniques, sequences, procedures, safety precautions or programs in connection with the Work, or for the Contractor's failure to carry out the Work in conformity with the Contract Documents.

### **3.2 CONTRACT ADMINISTRATION**

- 3.2.1 The Architect shall assist the Construction Manager to provide administration of the Contracts for the Project as provided in the Agreement for Professional Design Services and including, without limitation, the performance of the functions hereinafter described.
  - 3.2.1.1 The Architect shall secure the NPDES general permit by submitting a notice of intent application form to the Ohio Environmental Protection Agency at least forty-five (45) days prior to the start of construction. The Architect shall prepare and certify a storm water pollution prevention plan to provide sediment and erosion controls at the Project, and shall process the required notice of termination prior to Contract Completion.
  - 3.2.1.2 The Architect shall attend all progress meetings, and any coordination meetings as requested by the Construction Manager. The Architect shall

assist the Construction Manager to prepare an agenda and a written report of each progress meeting and coordination meeting the Architect attends.

- 3.2.1.3 The Architect, through the Construction Manager, may authorize minor changes or alterations in the Work that are consistent with the intent of the Contract Documents and do not involve adjustment of the Contract Sum or Contract Time. The Architect has no authority to authorize the Contractor to perform additional or extra Work for which the Contractor may seek adjustment of the Contract Sum or the Contract Time.
- 3.2.1.4 The Architect shall review and approve, or recommend approval, of all forms required under the Contract Documents.
- 3.2.1.5 The Architect, through the Construction Manager, shall render decisions in connection with the Contractor's responsibilities under the Contract Documents, and submit recommendations to the Commission, through the Construction Manager, for enforcement of the Contract as necessary.
- 3.2.2 The Architect is the initial interpreter of all requirements of the Contract Documents. All decisions of the Architect are subject to final determination by the Commission.

#### *ARTICLE 4 - CONSTRUCTION PHASE COORDINATION*

##### **4.1 RESPONSIBILITY OF THE CONTRACTOR**

- 4.1.1 The Contractor shall allow Separate Contractors reasonable opportunity for the introduction and storage of materials and equipment and execution of their work, and shall properly connect and coordinate the Work with the Separate Contractors' work. The Contractor shall complete portions of the Work in the sequence and time in the Construction Schedule.
- 4.1.2 The Contractor shall perform the Work so as not to interfere with, disturb, hinder or delay the Separate Contractors' work or the responsibilities of the Architect and the Construction Manager. The Commission's liability to the Contractor for any injury, damage or expense resulting from interference, hindrance, disruption or delay attributable to a Separate Contractor or a Person for whom a Separate Contractor is legally responsible is limited to an extension of the Contract Time.
  - 4.1.2.1 If the Contractor, its Subcontractors or Material Suppliers, damage or injures the property or work of a Separate Contractor, or by failure to perform the Work with due diligence, delay, interfere with, hinder or disrupt a Separate Contractor who suffers damage, injury or expense thereby, the Contractor shall be responsible to the Separate Contractor for such damage, injury or expense.
  - 4.1.2.2 The intent of GC subparagraph 4.1.2.1 is to bind each Separate Contractor as an intended third party beneficiary of the Contract.
  - 4.1.2.3 The Contractor shall not delay completion of the Work on account of claims, disputes, or actions between the Contractor and Separate Contractors concerning damage, injury, or expense.

- 4.1.3 If a Separate Contractor's work precedes any part of the Work, the Contractor shall inspect the preceding work before commencing the Work, and immediately report in writing to the Architect, through the Construction Manager, any defects which render the preceding work unsuitable for the Work.
- 4.1.3.1 The Contractor's failure to make such inspection and report in writing, as required by GC subparagraph 4.1.3, constitutes acceptance of the preceding work as fit and proper for the reception of the Work, except as to latent defects that a reasonable inspection would not disclose.
- 4.1.4 The Contractor shall consult with the Construction Manager and the Architect to obtain full knowledge of the rules, regulations or requirements affecting the Project.
- 4.1.5 Under the direction of the Construction Manager, the Contractor shall coordinate the Work with the work of Separate Contractors and with the activities of the Construction Manager and the Architect to complete the Project in accordance with the Contract Documents.
- 4.1.6 The Contractor shall supervise the Work in conformity with the coordination of the Construction Manager and shall take orders and directions from the Construction Manager as provided in the Contract Documents. Orders and direction from the Construction Manager for the coordination of the Work shall not relieve the Contractor from the Contractor's duty to supervise the Work in accordance with the Contract Documents.
- 4.1.7 The Contractor shall give reasonable notice to the Architect, through the Construction Manager, when the Architect's presence is required for special consultations, inspections, testing, approvals or decisions.
- 4.1.8 If the Contractor fails to perform the Contract according to the requirements of the Contract Documents, such failure to perform may be just cause for the Commission to find the Contractor is not responsible for future contract awards. A Contractor's compliance with the ("EDGE") program, including the requirement to make a good faith effort to locate and engage the services of EDGE business enterprises in connection with the Project, shall be a matter of Bidder responsibility on future projects.
- 4.1.9 The Contractor shall cooperate with the Architect and the Construction Manager so as not to interfere, disturb, hinder or delay the work of Separate Contractors or the responsibilities of the Architect and the Construction Manager.

## **4.2 RESPONSIBILITY AND AUTHORITY OF THE CONSTRUCTION MANAGER**

- 4.2.1 The Construction Manager shall consult with the Architect, the Commission and any governmental authority having jurisdiction over the Project, to obtain full knowledge of all rules, regulations or requirements affecting the Project. The Construction Manager shall establish the Project's regular working hours, subject to approval by the Architect and the Commission.
- 4.2.2 The Construction Manager shall schedule the Project and coordinate the Work with the work of all Separate Contractors and with the activities and responsibilities of the

Architect and the Commission to complete the Project in accordance with the Contract Documents.

- 4.2.2.1 If the Contractor fails to prosecute the Work in accordance with the Construction Schedule, the provisions of GC paragraph 5.3 may be invoked.
- 4.2.2.2 The Construction Manager's coordination activities shall not relieve the Contractor from the Contractor's duty to supervise, direct and perform the Work in accordance with the Contract Documents nor shall it relieve the Contractor of its coordination obligation pursuant to GC paragraph 4.1.
- 4.2.3 The Construction Manager shall develop and keep current the Construction Schedule for the Project in accordance with GC paragraph 4.3 and shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Construction Schedule.
  - 4.2.3.1 The Construction Schedule shall not exceed the time limits specified in the Contract Documents and shall provide for reasonable, efficient and economical performance of the Project, as determined by the Construction Manager, and shall be related to the entire Project to the extent required by the Contract Documents.
  - 4.2.3.2 The Construction Schedule shall be used to plan, organize and execute the Project, record and report actual performance and progress, and show how the Contractor plans to complete the remaining Work by Contract Completion.
- 4.2.4 The Construction Manager shall monitor the progress of the Work for conformance to the Construction Schedule and shall initiate and coordinate revisions of the Construction Schedule as required by the Contract Documents.
- 4.2.5 The Construction Manager shall have the authority to disapprove or reject any item of Defective Work, or Work that the Construction Manager believes will not produce a Project that conforms to the Contract Documents. The Construction Manager shall immediately notify the Contractor, the Architect and the Commission any time the Construction Manager disapproves or rejects an item of Work.
- 4.2.6 The Construction Manager shall render decisions in connection with the Contractor's responsibilities under the Contract Documents, and submit recommendations to the Commission for enforcement of the Contract as necessary.
- 4.2.7 The Construction Manager shall attend and conduct any and all progress and coordination meetings. The Construction Manager shall prepare an agenda and produce a written report of each progress and coordination meeting, and distribute the report to the Architect, the Commission and the Contractor within three (3) working days after the meeting. The Construction Manager shall not delegate the duty to prepare the agenda and written reports of any progress or coordination meeting.
- 4.2.8 In the event of default of the Contractor or any Separate Contractor, the Construction Manager shall cooperate with the Architect, the Commission, and the defaulting contractor's Surety to achieve the Contract Completion date.

- 4.2.9 The Construction Manager shall keep a daily log containing a record of weather, number of workers on Site for the Contractor and each Separate Contractor, identification of equipment, Work accomplished, problems encountered, and other similar relevant data.
- 4.2.10 The Construction Manager, with the assistance of the Architect, shall render written recommendations, within the time specified and for enforcement of the Contract as necessary, on any matter in question involving the Contractor and shall provide information or services to the Commission until final disposition of any dispute.
- 4.2.11 The Construction Manager shall not be responsible for construction means, methods, techniques, sequences, procedures, safety precautions or programs in connection with the Work. The services provided by the Construction Manager and the existence of schedules or services prepared or performed by the Construction Manager shall in no way relieve the Contractor from responsibility for complying with all the requirements of the Contract Documents.

### 4.3 CONSTRUCTION SCHEDULE

- 4.3.1 With the cooperation of the Contractor and each Separate Contractor, and utilizing information provided by the Contractor and each Separate Contractor as appropriate in the Construction Manager's opinion, the Construction Manager shall prepare the Construction Schedule for the Project.
- 4.3.1.1 Within ten (10) days of the date of the Notice to Proceed, the Construction Manager shall distribute a preliminary construction schedule to the Contractor and each Separate Contractor. The Construction Manager shall provide a hard copy and an electronic executable form of this preliminary construction schedule to the Contractor and each Separate Contractor.
- 4.3.1.2 Within ten (10) days after receiving the Construction Manager's preliminary construction schedule, the Contractor shall provide to the Construction Manager, on a form required by the Construction Manager, comments on the preliminary construction schedule, the Contractor's proposed plan and schedule to coordinate with Separate Contractors, and all other information requested and required by the Construction Manager to prepare the Construction Schedule, including without limitation:
- .1 Verification that the Contractor's activities listed in the preliminary construction schedule is a full and complete listing of necessary activities to allow the Contractor to economically perform the Work and coordinate the Work with Separate Contractors.
  - .2 Verification that the activity listing of Separate Contractors in the preliminary construction schedule is satisfactory to allow the Contractor to coordinate with the work of Separate Contractors.
  - .3 Any suggested new activities that will allow the Contractor to make the verification required by items .1 and .2 above.

- .1 For any proposed activities under this item .3, the Contractor shall propose logical relationships and coordination with other activities.
  - .4 Verification that the proposed durations, logic, total float, and free float are acceptable for each listed and proposed activity, including verification that the Contractor can perform the Work in accordance with such activity listing and schedule should the total and free float listed not be available.
  - .5 The labor and material resources (in units determined by the Construction Manager) for each of the Contractor's listed and proposed new activities. Failure to provide this information fully shall be deemed to be acceptance of the Construction Manager's preliminary construction schedule as well as bar at any time the Contractor's right to make any request for adjustment to the Contract Time or Contract Sum, or any other demand based upon a contention that the Contractor's planned schedule and resources differed from the Construction Manager's preliminary construction schedule.
  - .6 A graphic presentation of the sequence of the Work in the media and format required for the Project.
  - .7 Identification of each phase of the Work and any Milestone dates.
  - .8 Identification of activities and durations for review and approval of Shop Drawings and other action submittals, fabrication and review of mock-up Work, product review and procurement, fabrication, shop inspection, and delivery, including, but not limited to, lead time, coordination drawing delivery, Punch List, Punch List correction, Project close-out requirements, Contract Completion, and occupancy requirements.
  - .9 Identification of disruptions and shutdowns due to other operations.
  - .10 Identification of the critical path of the Work
  - .11 Identification of the crew size and total resource hours for each activity in the schedule
  - .12 The Contractor's signature and date indicating approval.
- 4.3.1.3 Within seven (7) days after receiving the Contractor's proposed plan and schedule, the Construction Manager shall provide comments to the Contractor on the Contractor's proposed plan and schedule.
  - 4.3.1.4 Within seven (7) days after receiving the Construction Manager's comments, the Contractor shall revise its proposed plan and schedule to incorporate those comments and submit the revised plan and schedule to the Construction Manager.
  - 4.3.1.5 Within forty (40) days of the date of the Notice to Proceed, the Construction Manager shall issue the initial Construction Schedule to the Contractor, each

Separate Contractor, the Schools, the Commission, and the Architect in both paper form and electronic executable files.

- 4.3.1.6 In the interim period between the Notice to Proceed and the issuing of the initial Construction Schedule, the Contractor and each Separate Contractor shall conform to weekly schedules produced by the Construction Manager. Such conformance shall be the same as the Contractor's obligation to perform in accordance with the Construction Schedule under the Contract Documents.
- 4.3.2 Upon the Construction Manager's issuing of the initial Construction Schedule under 4.3.1.5, the Contractor shall review and acknowledge in writing, within five (5) days of receipt, the Contractor's concurrence with the initial Construction Schedule. This "review and acknowledgment" shall constitute "signing" the schedule. Failure to do so shall be deemed to be acknowledgement that the Contractor shall adhere to the requirements of the initial Construction Schedule. Such failure shall also bar the Contractor from making any request for adjustment to the Contract Sum or Contract Time, or any other demand based upon a contention that the Contractor did not acknowledge the initial Construction Schedule or that the Contractor's planned schedule and resources differed from the initial Construction Schedule.
- 4.3.3 Immediately after the Contractor, each Separate Contractor, and the Construction Manager have signed the initial Construction Schedule pursuant to GC subparagraph 4.3.2, the Construction Manager shall submit a signed copy of the Construction Schedule and a schedule of submittals to the Architect.
  - 4.3.3.1 Within five (5) days of receipt of the initial Construction Schedule, the Architect, in writing to the Construction Manager, the Commission shall review the initial Construction Schedule and schedule of submittals, and approve them and submit them to the Commission for approval, or reject them and return them to the Construction Manager with recommendations for revisions within ten (10) days.
  - 4.3.3.2 The Construction Manager and Architect may recommend to the Commission that no payment be made to the Contractor without a Construction Schedule approved by the Construction Manager, the Contractor, each Separate Contractor, the Architect and the Commission.
- 4.3.4 The Construction Manager shall provide in each Construction Schedule: Activity identification and description for each activity broken down to a maximum duration that is appropriate for the activity, responsibility of the Contractor and each Separate Contractor, the Contractor's resources and crew size for each activity, and early start, early finish, late start, and late finish dates.
  - 4.3.4.1 Each Construction Schedule shall show predecessor activities and successor activities for each activity, entry free float, total float, and percentage of completion, and identify the appropriate predecessors and successors for all related activities.
  - 4.3.4.2 Each Construction Schedule shall show all submittal dates, coordination drawing preparation, shop drawing submittals, and mock-up review and approval duration.

- 4.3.5 Unless otherwise specified by the Contract Documents, on a weekly basis, the Contractor shall prepare and submit to the Construction Manager a written report describing:
  - 4.3.5.1 Activities begun or finished during the preceding week;
  - 4.3.5.2 Activities in progress and expected completion;
  - 4.3.5.3 Activities to be started or finished in the upcoming two (2) weeks, including without limitation, the Contractor's workforce size, estimated remaining or total duration for the period for such Work, and total resource hours associated with those activities; and
  - 4.3.5.4 Other information requested by the Construction Manager.
- 4.3.6 The Construction Manager shall attach the above information to the minutes of progress meetings on a timely basis.
- 4.3.7 If it is apparent to the Construction Manager that the Contractor may be unable to meet critical path activities, Milestone completion dates, or the Contract Completion date, the Construction Manager shall direct the Contractor to submit within three (3) days a recovery plan to avoid or minimize the delay to the Project, so as to ensure that the completion dates of such activities shall be met.
  - 4.3.7.1 If the Contractor fails to submit a recovery plan within three (3) days, as required under GC subparagraph 4.3.7, the Contractor shall be barred from requesting an adjustment to the Contract Time or Contract Sum, or any other demand which is related in any fashion to the information required under GC subparagraph 4.3.7.
- 4.3.8 A recovery plan shall include, without limitation, adjustments to one or more of the following:
  - 4.3.8.1 Workforce
  - 4.3.8.2 Hours per shift
  - 4.3.8.3 Shifts per workday
  - 4.3.8.4 Workdays per week
  - 4.3.8.5 Equipment
  - 4.3.8.6 Activity logic
- 4.3.9 If the Construction Manager approves the recovery plan, the Construction Manager shall prepare an updated Construction Schedule in accordance with GC subparagraph 4.3.10.
- 4.3.10 The Construction Manager shall update the Construction Schedule on a monthly basis, or other interval approved by the Commission, with the approval of the Contractor and each Separate Contractor, in accordance with GC subparagraph 4.3.2.

- 4.3.10.1 The Construction Manager shall submit a tabular copy showing all changes to the previously approved Construction Schedule including, without limitation, logic, float, and actual start date of activities. The initial Construction Schedule that was approved in accordance with GC subparagraph 4.3.2 and all other subsequent Construction Schedules approved in accordance with GC subparagraph 4.3.2 shall serve as an affirmation that the Construction Manager and the Contractor agree to and can meet the applicable requirements of the updated Construction Schedule.
- 4.3.11 Prior to updating the Construction Schedule, the Construction Manager shall submit a form to the Contractor requiring that the following information be provided to the Construction Manager within two (2) business days of the Contractor's receipt of the form:
  - 4.3.11.1 The actual start date of any Construction Schedule activity that started since the last update to the Construction Schedule.
  - 4.3.11.2 The actual start date of any activity not identified on the current Construction Schedule that started since the last update to the Construction Schedule.
  - 4.3.11.3 The actual completion dates of previously identified Construction Schedule activities or additional activities that finished since the last update to the Construction Schedule.
  - 4.3.11.4 Any suspensions, disruptions, or interruptions in any previously identified Construction Schedule activities or additional activities upon which the Contractor had previously started.
  - 4.3.11.5 The percentage completion of the activities identified in GC subparagraphs 4.3.11.1, 4.3.11.2, and 4.3.11.4.
  - 4.3.11.6 The estimated remaining duration for the activities identified in GC subparagraphs 4.3.11.1, 4.3.11.2, and 4.3.11.4, based upon continuous Work from the date of the Construction Manager's Construction Schedule update form, including the size of the workforce and the Work calendar (if different than the typical Project calendar).
  - 4.3.11.7 The estimated date of re-commencement of any activity identified in GC subparagraph 4.3.11.4 which is suspended or interrupted as of the date of the Construction Manager's Construction Schedule update form, or if such date is unknown, identify the factors which prevent the identification of such a date.
  - 4.3.11.8 Whether the Contractor is able to identify the re-commencement date or not, the estimated remaining duration for any activities identified in GC subparagraph 4.3.11.7, based upon continuous Work from the date of the Construction Manager's Construction Schedule update form, including the size of the workforce and the Work calendar (if different than the typical Project calendar).
- 4.3.12 If the Contractor fails to return the Construction Schedule update form within two (2) business days of the Contractor's receipt of the form, the Construction Manager shall

provide reasonable efforts to immediately estimate all required information to update the Construction Schedule.

- 4.3.13 If the Contractor fails to provide all of the information required under GC subparagraph 4.3.11, or if in the Construction Manager's sole opinion the Contractor provides inaccurate information, the Construction Manager shall immediately estimate the required information to update the Construction Schedule.
- 4.3.14 If the Construction Manager estimates required information to update the Construction Schedule in accordance with GC subparagraphs 4.3.12 or 4.3.13, the Contractor shall:
- 4.3.14.1 Maintain its obligation to perform in accordance with the Construction Schedule.
  - 4.3.14.2 Be deemed to have accepted the estimated information provided by the Construction Manager.
  - 4.3.14.3 Be barred, at any time or for any reason, from making a request for adjustment to the Contract Time or Contract Sum, or any other demand based upon a contention that the Contractor was impacted in any manner by the estimated information provided by the Construction Manager.
- 4.3.15 If the Contractor fails to provide all of the information required under GC subparagraph 4.3.11 on a timely basis, the Commission may, in its sole discretion, withhold payment from the Contractor.
- 4.3.16 Within three (3) business days of completion of the processes described in GC subparagraphs 4.3.11, 4.3.12, and 4.3.13, the Construction Manager shall issue two (2) paper copies of the updated Construction Schedule, including any necessary schedule reports and narratives, to the Contractor, Separate Contractors, Architect, Schools, and Commission.
- 4.3.16.1 The updated Construction Schedule shall account for all information provided by the Contractor under GC subparagraph 4.3.11 or estimated by the Construction Manager under GC subparagraphs 4.3.12 and 4.3.13.
  - 4.3.16.2 The copies of the updated Construction Schedule shall include, without limitation:
    - .1 Early and late starts and finishes, and total and free float of all activities.
    - .2 The current Construction Schedule targeted against the previous update of the Construction Schedule, as well as the initial Construction Schedule.
    - .3 Logical relationships, indicating predecessor and successor activities, as well as leads and lags.
    - .4 All constrained activities.

- .5 All information estimated, or corrected for inaccuracies, by the Construction Manager pursuant to GC subparagraphs 4.3.12 and 4.3.13.

4.3.17 Within two (2) business days of receiving the updated Construction Schedule provided by the Construction Manager pursuant to GC subparagraph 4.3.16, the Contractor shall provide the Construction Manager with written acknowledgement of receipt and understanding of the updated Construction Schedule and the accompanying reports and narratives. In such written acknowledgement, the Contractor shall also acknowledge the resources necessary for the Contractor to accomplish the early start and finish dates of the Contractor's activities. Failure to acknowledge shall be deemed to be acceptance by Contractor.

4.3.17.1 Such acknowledgement may include the Contractor's observations on the updated Construction Schedule, which the Construction Manager may consider in preparing subsequent updates to the Construction Schedule.

- .1 Such observations shall not, in any manner, relieve the Contractor from performing in accordance with the updated Construction Schedule.
- .2 If the Contractor believes that it is entitled to an adjustment of the Contract Sum or Contract Time, or both, on account of such observations, the Contractor may request an adjustment to the Contract by giving written notice under GC 7.2.3 within seven (7) days of submitting the acknowledgement containing the observations.

#### **4.4 PARTNERING**

4.4.1 The formation of a cohesive, mutually beneficial partnering arrangement among the Contractor, all Separate Contractors, the Commission, the Architect and the Construction Manager will accomplish the construction of the Project most effectively and efficiently. Such an arrangement draws on their collective strengths, skills, and knowledge to achieve a Project of the intended quality, within budget, and on schedule. To achieve that objective, participation in a partnering session is required for the following key stakeholders:

- 4.4.1.1 Schools – Primary representative
- 4.4.1.2 Commission – Project administrator
- 4.4.1.3 Architect – Principal-in-charge, project manager, field representative, major consultants
- 4.4.1.4 Construction Manager – Project manager, project engineer if applicable, field representative, schedule manager if applicable, and estimator if applicable
- 4.4.1.5 Contractor – Principal-in-charge, project manager, and superintendent
- 4.4.1.6 Separate Contractors – Principal-in-charge, project manager, and superintendent

- 4.4.1.7 Major Subcontractors (e.g., masonry, fire protection) – Principal-in-charge, project manager or superintendent
- 4.4.2 The purpose of the partnering arrangement is to build cooperative relationships between the Project’s key stakeholders, avoid or minimize disputes, and nurture a more collaborative ethic characterized by trust, cooperation and teamwork. This arrangement is intended to produce a voluntary, non-binding, but formally structured arrangement among the Project’s key stakeholders, leading to an attitude that fosters risk sharing.
- 4.4.3 To create and implement the partnering arrangement, the Project’s key stakeholders shall meet prior to the construction of the Project for development of a partnering agreement. The agreement should be comprehensive and focus on all issues necessary for successful completion of the Project, and shall identify common goals and objectives, develop a problem solution process, an Alternative Dispute Resolution (“ADR”) strategy in accordance with GC paragraph 8.10, and an implementation plan for the partnering arrangement.
- 4.4.4 Formal contractual relations, responsibilities, and liabilities shall not be affected by any partnering agreement. Any cost associated with establishing this partnership shall be agreed to among the Project’s key stakeholders and shall be shared equally among them, with no adjustment to the Contract Sum. The Contractor shall include in its base bid the resources necessary to participate in the partnering session.
- 4.4.5 Partnering services may extend over the entire period of performance of the Contract and may include intervention or project realignment services to be utilized if serious disputes arise. The Project’s key stakeholders should agree, during the initial partnering session, to the types of situations and circumstances in which intervention or realignment services shall be utilized.
- 4.4.5.1 If realignment or intervention services are utilized, partnering facilitators shall not be called as witnesses in any litigation, mediation, or quasi-judicial proceeding.

## **4.5 PROGRESS MEETINGS**

- 4.5.1 Unless otherwise specified in the Contract Documents, the Construction Manager shall schedule a weekly progress meeting for the Contractor, all Separate Contractors, and other Persons involved in the Project. The purpose of the progress meeting is to review progress on the Project during the previous week, discuss anticipated progress during the following weeks, review critical operations, and discuss critical problems.
- 4.5.2 The Contractor, the Construction Manager, and the Architect shall be represented at every progress meeting by a Person authorized with signature authority to make decisions regarding possible modification of the Contract Documents or Construction Schedule.
- 4.5.2.1 The Construction Manager shall notify the Architect, the Contractor, and the Separate Contractors of the time and place of the progress meeting which shall thereafter be the same day and hour of the week for the duration of the Project, unless the Construction Manager notifies the Architect, the

Contractor and Separate Contractors of a different day and hour at least two (2) days in advance.

4.5.2.2 The Contractor shall have any of its Subcontractors and Material Suppliers attend the progress meeting as determined advisable by the Contractor, or as requested by the Construction Manager or the Architect.

4.5.3 The Construction Manager shall prepare a written report of each progress meeting and distribute such report within three (3) business days of the meeting to the Architect, the Commission, and the Contractor. The Construction Manager shall not delegate the duty to prepare a written report of any progress meeting.

4.5.3.1 If any Person in attendance objects to anything in a report of a progress meeting, the Person shall notify the Construction Manager and any other affected Person in writing explaining the objection within five (5) days of receiving the report.

4.5.3.2 The report of each progress meeting shall reflect any objection made to the report of the previous progress meeting and any response thereto.

#### **4.6 COORDINATION MEETINGS**

4.6.1 Unless otherwise specified in the Contract Documents, the Construction Manager shall schedule a weekly coordination meeting for the Contractor and all Separate Contractors and appropriate Subcontractors and Material Suppliers ("Coordination Participants"). The Architect shall attend coordination meetings when requested by the Construction Manager.

4.6.1.1 The purpose of the coordination meeting is to establish the exact location of each piece of equipment, pipe, duct, conduit, and other components of the Project; to discuss the sequence of construction and its relationship with the Construction Schedule; and to coordinate the appropriate shared use of available construction and storage space, especially interstitial spaces, chases, and mechanical rooms.

4.6.1.2 Unless otherwise specified in the Contract Documents, the Construction Manager shall prepare a written report of each coordination meeting and distribute the report within three (3) business days of the meeting to the Architect, the Contractor, the Separate Contractors, and other Coordination Participants. The Construction Manager shall not delegate the duty to prepare a written report of any coordination meeting.

4.6.1.3 Each Coordination Participant shall be knowledgeable about the Project and the scope of its work. One individual from each Coordination Participant shall have authority to make decisions regarding the coordination process and drawings.

4.6.1.4 Each Coordination Participant shall come to the coordination meetings prepared to demonstrate and furnish documentation that it has anticipated the work of other Persons, and planned its installation. Each Coordination Participant shall coordinate its installation with the work of other Persons.

- 4.6.1.5 Each Coordination Participant shall utilize documentation and information provided by other Coordination Participants to verify that the utility requirements, physical size, and characteristics of planned equipment are compatible with related or connected equipment, existing or planned building components, and existing or planned utilities.
- 4.6.1.6 The Coordination Participants shall utilize the documentation and information provided by each of them in determining the actual placement and positioning of equipment and devices to avoid interference with the work of other Persons, building finishes, and architectural details.
- 4.6.1.7 The Coordination Participants shall utilize the documentation and information provided by each of them to coordinate space requirements and installation considerations to maximize accessibility to equipment and devices for purposes of maintenance, repairs, and replacement.

## 4.7 COORDINATION DRAWINGS

- 4.7.1 Unless otherwise specified in the Contract Documents, the HVAC Contractor shall, within forty-five (45) days of the date of the Notice to Proceed or such other period of time as mutually agreed by the HVAC Contractor and the Construction Manager, prepare drawings (the "Preliminary Coordination Drawings") after the Coordination Participants (1) determine the sequence of the Project, (2) complete the activities described in GC subparagraph 4.6.1, (3) identify the areas requiring special attention ("Coordination Areas"), and (4) determine the need for a coordination drawing for any Coordination Area. The HVAC Contractor shall prepare the Preliminary Coordination Drawings at one-quarter-inch equals one-foot scale drawings, with CAD or BIM software acceptable to the Commission. The Preliminary Coordination Drawings shall show, either on the same or separate drawings, all sheet metal work with plan and elevation dimensions, which specifically locate all HVAC duct work, HVAC equipment, and HVAC piping for each Coordination Area based upon the information, discussion, and resulting consensus of the Coordination Participants during the coordination meetings.
  - 4.7.1.1 The HVAC Contractor shall provide the Preliminary Coordination Drawings to all Coordination Participants. Each Coordination Participant shall use the Preliminary Coordination Drawings as a baseline to develop drawings of its work within each applicable Coordination Area to specifically locate equipment, devices, piping, conduits and other work as discussed and agreed at the coordination meetings.
  - 4.7.1.2 Each Coordination Participant with work within a Coordination Area shall return its drawings to the HVAC Contractor marked to show the location of the Coordination Participant's equipment, devices, piping, conduits, and other work for the HVAC Contractor's preparation of detailed coordination drawings ("Coordination Drawings").
  - 4.7.1.3 Any Coordination Participant with no work in any Coordination Area may return the applicable Preliminary Coordination Drawings to the HVAC Contractor with a statement on the drawings signed by an authorized representative of the Coordination Participant certifying that it has no work within that Coordination Area.

- 4.7.1.4 After the HVAC Contractor completes the Coordination Drawings, the HVAC Contractor shall forward a copy of the Coordination Drawings to the Architect, the Construction Manager, the Commission, the Contractor, the Separate Contractors, and other Coordination Participants with work within the limits of a Coordination Area. The Contractor shall report discrepancies in the drawings, in writing, to the HVAC Contractor within seven (7) days after receiving the drawings.
- 4.7.1.5 The Architect and the Construction Manager shall review the Coordination Drawings to determine whether the Coordination Participants achieved the goals listed in GC subparagraph 4.6.1. The Architect and the Construction Manager shall report any concerns, in writing, to the Coordination Participants within fourteen (14) days after receiving the drawings.
- 4.7.2 If installed Work causes or contributes to interference with subsequent work of a Separate Contractor, the Construction Manager in consultation with the Architect shall determine the needed modifications to the installed Work to accommodate the subsequent work. The Construction Manager's decision is final, subject to GC Article 8. The Contractor shall pay the cost of any such modifications.
- 4.7.3 The Contractor shall be represented at every coordination meeting by a Person authorized with signature authority to make decisions regarding possible modification of the Contract Documents. The Contractor shall have any of its Subcontractors and Material Suppliers attend the coordination meeting as deemed advisable by the Contractor or as requested by the Construction Manager.

## ***ARTICLE 5 - RIGHTS AND RESPONSIBILITIES OF THE COMMISSION***

### **5.1 THE OHIO SCHOOL FACILITIES COMMISSION**

- 5.1.1 The Commission, acting by and through an Executive Director, administers the construction of the Project.
- 5.1.2 The Executive Director shall designate a Project Administrator for the Project to consult with the Architect and the Construction Manager. The Project Administrator shall be authorized to act on behalf of the Commission to perform specific responsibilities under the Contract.
- 5.1.3 The Commission shall furnish information and services required of it in a timely manner.
- 5.1.4 The Commission shall have access to the Work at all times, whenever the Project is in preparation or progress.
- 5.1.5 The Commission may communicate with the Contractor through the Construction Manager.
- 5.1.6 The Commission shall competitively bid, and shall, execute and administer contracts for the construction of the Project in compliance with Applicable Law.

- 5.1.7 Upon issuance of the Notice to Proceed, the Commission shall provide the Site to the Contractor in such condition to permit the Contractor to perform the Work.
- 5.2.8 The Commission may request a change in the Work.

## **5.2 RIGHT TO PROSECUTE WORK AND BACKCHARGE CONTRACTOR**

- 5.2.1 If the Contractor provides Defective Work or fails or neglects to prosecute the Work in accordance with the Construction Documents, the Construction Manager may issue a written notice providing five (5) days for the Contractor to begin to correct Defective Work or to recover schedule deficiencies as set forth in GC subparagraph 5.3.2 (“5-Day Notice”) to the Contractor.
- 5.2.2 If the Contractor fails or refuses to commence and continue to correct the Defective Work or recover the schedule deficiencies with diligence and promptness within fifteen (15) days after receiving the 5-Day Notice with the approval of the Commission, may, without jeopardizing other remedies, take any action the Commission deems appropriate to correct the Defective Work or to recover the schedule deficiencies.
  - 5.2.2.1 If the Commission proceeds as described under GC subparagraph 5.3.2, the Contractor shall pay all resulting costs and damages. Those costs and damages include, but are not limited to, the reasonable cost of correcting the Defective Work or recovering the schedule deficiencies and the related fees and charges of engineers, architects, attorneys, and other professionals. The Commission shall deduct the costs and damages from payments then or thereafter due the Contractor .
  - 5.2.2.2 If the payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to the Commission.
  - 5.2.2.3 If the Contractor believes the Commission wrongfully exercised its rights under GC subparagraph 5.3.2, the Contractor may request an adjustment to the Contract by giving written notice under GC subparagraph 7.3.2.

## **5.3 SCHOOL’S RIGHT TO PARTIAL OCCUPANCY**

- 5.3.1 The School may occupy or use a portion of the Project prior to Contract Completion if:
  - 5.3.1.1 The building authority with jurisdiction over the Project issues a temporary occupancy permit for the area in question;
  - 5.3.1.2 The insurers providing property insurance have been provided written notice of the Partial Occupancy; and
  - 5.3.1.3 The Commission has received notice of the Partial Occupancy from the Construction Manager and has consented to it.

- 5.3.2 Before the School's commence Partial Occupancy, the Architect, through the Construction Manager, shall process a Certificate of Contract Completion for the designated area listing incomplete or Defective Work under the Contract for approval of the Commission.
- 5.3.3 From the date of execution of the Certificate of Contract Completion by the Commission, the Contractor shall be relieved of the obligation to maintain the accepted portion of the Work, but shall remain obligated to complete and correct the Work and to carry the insurance required by the Contract Documents during performance of any such Work.
- 5.3.4 The School's Partial Occupancy shall not constitute acceptance of any Defective Work, nor does it relieve the Contractor of liability for any express or implied warranties or responsibility for Defective Work.

## *ARTICLE 6 - TIME*

### **6.1 COMPUTING TIME**

- 6.1.1 When the Contract Documents refer to a period of time by a number of days, the period shall be computed to exclude the first and include the last day of the period. If the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation and the period shall end on the next succeeding day that is not a Saturday, Sunday, or legal holiday.
- 6.1.2 Except as excluded under GC subparagraph 6.1.1, the Contract Time and all other time periods referred to in the Contract Documents includes Saturdays, Sundays, and all days defined as legal holidays by GC subparagraph 6.1.4.
- 6.1.3 The standard workdays for Commission Projects are Monday through Friday, excluding legal holidays.
- 6.1.4 Legal holidays are as follows:
  - 6.1.4.1 New Year's Day – First Day in January;
  - 6.1.4.2 Martin Luther King Jr. Day – Third Monday in January;
  - 6.1.4.3 Washington-Lincoln (President's) Day – Third Monday in February;
  - 6.1.4.4 Memorial Day – Last Monday in May;
  - 6.1.4.5 Independence Day – Fourth day of July;
  - 6.1.4.6 Labor Day – First Monday in September;
  - 6.1.4.7 Columbus Day – Second Monday in October;
  - 6.1.4.8 Veteran's Day – Eleventh Day of November;

6.1.4.9 Thanksgiving Day – Fourth Thursday of November; and

6.1.4.10 Christmas Day – Twenty-fifth day of December.

6.1.5 If a legal holiday falls on a Saturday, it is observed on the preceding Friday. If a legal holiday falls on a Sunday, it is observed on the following Monday.

## **6.2 TIME OF ESSENCE**

6.2.1 Time limits stated in the Contract Documents are of the essence of the Contract and all obligations there under. By signing the Contract Form, the Contractor acknowledges that the Contract Time is reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project. By acknowledging the Construction Schedule in writing, the Contractor acknowledges that the specified Milestone dates are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project.

6.2.1.1 The Notice to Proceed shall establish the date for commencement of the Work.

6.2.1.2 The Contractor acknowledges that the Commission or Schools have entered into, or may enter into, agreements for use of all or part of the site where the Work is to be completed based upon the Contractor achieving Contract Completion within the Contract time.

6.2.1.3 The Contractor shall perform the Work in a reasonable, efficient and economical sequence, in cooperation with the Separate Contractors, the Construction Manager, and the Architect, and in the order and time as provided in the Construction Schedule.

6.2.1.4 The Contractor shall perform the Work so as not to interfere with, disturb, hinder or delay the work of Separate Contractors.

6.2.1.5 The Contractor acknowledges that it may be subject to interference, disruption, hindrance or delay in the progress of the Work from any cause. The sole remedy for such interference, disruption, hindrance or delay shall be an extension of the Contract Time under GC Article 8, unless otherwise prohibited by ORC Section 4113.62.

## **6.3 CRITICAL PATH**

6.3.1 Notwithstanding any other provision of the Contract Documents, time extensions shall depend upon the extent to which the Work on the critical path of the Construction Schedule is affected, if applicable.

6.3.2 A Change Order granting a time extension may provide that the Contract Time shall be extended for only those specific elements so interfered with, disrupted, hindered or delayed and related remobilization and that remaining Milestone dates shall not be altered and may further provide for equitable adjustment of Liquidated Damages.

## *ARTICLE 7 – CONTRACT MODIFICATIONS*

### **7.1 GENERAL**

- 7.1.1 The Commission may order changes in the Work without invalidating the Contract. Subject to the limitations stated in this GC Article 7 and elsewhere in the Contract Documents, a change in the Work may be accomplished by a Change Order, Field Work Order, or a Work Directive.
  - 7.1.1.1 The Contractor shall proportionately increase the amount of the Bond whenever the Contract Sum is increased.
  - 7.1.1.2 If notice of any change affecting the Contract is required by the provision of any Bond, the giving of the notice shall be the Contractor's responsibility, and the amount of each applicable Bond shall be adjusted accordingly.
- 7.1.2 The Contractor shall not proceed with any change in the Work without the appropriate written authorization.
  - 7.1.2.1 Except as provided in GC subparagraph 2.14, the Contractor's failure to obtain prior written authorization for a change in the Work shall constitute a waiver by the Contractor of an adjustment to the Contract Sum or Contract Time for the related Work.
- 7.1.3 The Commission reserve the right to cancel or modify any written authorization for a change in the Work.
- 7.1.4 The Contractor shall perform all changes in the Work under the applicable provisions of the Contract Documents, and the Contractor shall proceed promptly with the change unless otherwise provided in the Change Order, Field Work Order, or Work Directive.
- 7.1.5 Paperwork Consolidation:
  - 7.1.5.1 Related Contract modifications, with the same or similar justification (e.g., Commission Request or Field Condition), may be consolidated into the same change-related document.
  - 7.1.5.2 Add and deduct Contract modifications, with the same or similar justification, may be included on the same Change Order, but only to the extent that the items in the minority shall not exceed 25 percent of the total sum of the majority items.
  - 7.1.5.3 Contract modifications resulting from errors or omissions shall not be combined with other modifications for which the Architect will receive a fee.
- 7.1.6 Change Order Numbering:
  - 7.1.6.1 The Construction Manager, in consultation with the Architect, shall assign a number to each Contract modification, which shall uniquely identify it.

- 7.1.6.2 The Construction Manager shall not duplicate or reuse any number throughout the Project or reuse assigned numbers for Proposal Requests that are initiated but cancelled in progress.
- 7.1.6.3 The number for each Change Order shall be coordinated with any associated Proposal Request or Field Work Order.
- 7.1.6.4 The same sequence of numbers may be utilized for multiple Contracts, if the associated change in Work involves multiple trades.
- 7.1.7 Change Order Log:
  - 7.1.7.1 The Construction Manager shall create and maintain a Change Order Log for the Project, which shall contain the following minimum information:
    - .1 Number of the modification;
    - .2 A brief description of the modification;
    - .3 Affected trade(s);
    - .4 Cost of the modification; and
    - .5 Dates sent to, and received from, the parties.
- 7.1.8 Reconciliation of Unit Price Items:
  - 7.1.8.1 The Commission may increase, decrease, or delete entirely the scheduled quantities of Work to be performed and materials to be furnished by Change Order.
  - 7.1.8.2 The Construction Manager, with the assistance of the Architect, shall issue a Change Order to reconcile the difference between the scheduled and actual quantities of Work performed and materials furnished.
  - 7.1.8.3 If the actual quantity of a Unit Price item differs from the scheduled quantity by 20 percent or more, so that application of the Unit Price to the quantities of Work proposed would create an undue hardship on either the Schools or the Contractor, the Construction Manager, with the assistance of the Architect, shall issue a Proposal Request and subsequent Change Order to adjust the Unit Price.
  - 7.1.8.4 If the actual quantity of a Unit Price item exceeds the scheduled quantity by 20 percent or more, the Contractor shall immediately notify the Construction Manager, who shall issue a Field Work Order and subsequent Change Order, with the assistance of the Architect, to authorize an adjustment in the scheduled quantity.

## **7.2 INITIATION OF CHANGE ORDERS**

- 7.2.1 Proposal Request:

- 7.2.1.1 The Construction Manager, with the assistance of the Architect, shall prepare and issue a Proposal Request to the Contractor to obtain the Contractor's Proposal for the adjustment of the Contract Sum or the Contract Time, or both, associated with a Contract modification.
- .1 In any Proposal for an adjustment of the Contract Sum, the Contractor shall specifically identify the items set forth in GC paragraph 7.6.
  - .2 In any Proposal for an adjustment of the Contract Time, the Contractor shall specifically identify the items set forth in GC paragraph 7.7.
  - .3 The Contractor's cost of preparing and providing Proposals is included in the Contract Sum.
- 7.2.1.2 The Contractor shall respond with a Proposal to the Construction Manager and the Commission within fourteen (14) days after receiving the Proposal Request. The allowable time for the Contractor's response may be extended by written agreement of the Contractor, the Construction Manager and the Commission. Failure to respond within the allowed time frame may result in the Commission proceeding with the work through any other means.
- 7.2.1.3 The Contractor shall hold the Proposal valid and open for acceptance for at least forty-five (45) days. The acceptance period may be adjusted by mutual written consent of the Contractor and the Commission. The time limits described under this GC subparagraph 7.2.1.3 apply only to Proposals submitted in response to a Proposal Request.
- 7.2.1.4 A Proposal may be accepted by the Commission only through a Change Order. A Proposal Request does not authorize the Contractor to proceed with a change in the Work.
- 7.2.1.5 If the Contractor does not timely submit a Proposal within the time required in GC subparagraph 7.2.1.3, the Contractor waives its right to an adjustment to the Contract Sum or Contract Time associated with the contemplated change in the Work.

7.2.2 Field Work Order:

- 7.2.2.1 A Field Work Order is a written order prepared by the Construction Manager, with the assistance of the Architect, and signed by the Commission, the Architect, and the Construction Manager, directing a change in the Work and may, if necessary:
- .1 State a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both; or
  - .2 Limit the scope of the change in the Work by a fixed adjustment of the Contract Sum.
- 7.2.2.2 A Field Work Order shall be used to direct a change in the Work in the absence of total agreement on the terms of a Change Order.

- 7.2.2.3 Upon receipt of a Field Work Order, the Contractor shall promptly proceed with the change in the Work involved.
- 7.2.2.4 The Contractor may sign the Field Work Order to accept the proposed basis for adjustment, if any, of the Contract Sum or Contract Time, or both.
- 7.2.2.5 Within fourteen (14) days after receiving the Field Work Order, the Contractor shall respond with a Proposal meeting the requirements of GC subparagraph 7.2.1 to the Construction Manager and the Commission, for adjustment of the Contract Sum or Contract Time, or both, on account of the change, unless the Field Work Order is performed on a time and materials basis under GC subparagraph 7.2.2.1.2. If the Field Work Order is performed on a time and materials basis, the Contractor shall submit its Proposal within seven (7) days after completing the Work.
- .1 The Proposal for the adjustment of the Contract Sum, if any, shall include: (1) written documentation as described under GC paragraph 7.6; and (2) a written statement from the Contractor that the proposed adjustment is the entire adjustment in the Contract Sum associated with the change.
  - .2 The Proposal for the change in the Contract Time, if any, shall include: (1) written documentation as described under GC paragraph 7.7; and (2) a written statement from the Contractor that the proposed adjustment is the entire adjustment of the Contract Time associated with the change.
- 7.2.2.6 If the Contractor does not respond to a Field Work Order as required under GC subparagraph 7.2.2.4, the Commission shall determine the adjustments, if any, of the Contract Sum and Contract Time. If the Contractor does not agree with the Commission's determination, the Contractor shall initiate a Claim under GC Article 8 within ten (10) days of the date on which the Commission issues their determination. The Contractor's failure to do so shall constitute an irrevocable waiver of the Claim.
- 7.2.2.7 Pending final determination of the total adjustment of the Contract Time on account of a Field Work Order, the period of time not in dispute for that change in the Work may be included in the Construction Schedule accompanied by a Change Order indicating the parties' agreement with part or all of the time adjustment.
- 7.2.2.8 If the Commission and Contractor agree on the adjustments of the Contract Sum and Contract Time associated with a Field Work Order, the Construction Manager shall, with the assistance of the Architect, prepare an appropriate Change Order within seven (7) days after receiving the Contractor's Proposal. The Architect, Construction Manager, Commission, and Contractor shall promptly sign the Change Order.
- 7.2.2.9 If the Commission and Contractor do not agree on the adjustments of the Contract Sum and Contract Time associated with a Field Work Order within sixty (60) days after the Field Work Order is issued, the Commission shall determine the adjustments, if any, of the Contract Sum and Contract Time. If the Contractor does not agree with the Commission's determination, the

Contractor shall initiate a Claim under GC Article 8 within ten (10) days of the date on which the Commission issues their determination, and the Contractor's failure to do so shall constitute an irrevocable waiver of the Claim.

7.2.2.10 If a change in the Work must start immediately to avoid an imminent impact to schedule of the Project, the Construction Manager may, with the assistance of the Architect, issue a Field Work Order authorizing the Contractor to proceed.

7.2.3 Request for Change Order:

7.2.3.1 The Contractor may initiate a change in the Work by submitting written notice to the Construction Manager accompanied by a Proposal meeting the requirements of GC subparagraph 7.2.1.

### **7.3 CHANGE ORDER PROCEDURE**

7.3.1 A Change Order is a written instrument prepared by the Construction Manager, with the assistance of the Architect, and signed by the Commission, the Architect, the Construction Manager, and the Contractor, stating their agreement upon all of the following:

7.3.1.1 A change in the Work;

7.3.1.2 The amount of the adjustment of the Contract Sum, if any; and

7.3.1.3 The extent of the adjustment of the Contract Time, if any.

7.3.2 In no event shall the Contractor be entitled to reserve any rights or take other similar action with respect to a Change Order if the effect or intent of the reservation or action would be to accommodate a further adjustment of the Contract Sum or Contract Time after the Contractor signs the Change Order. By signing a Change Order, the Contractor irrevocably certifies that the elements of a Change Order described in GC subparagraph 7.3.1 are completely satisfied, and waives all rights, if any, to seek further adjustment of the Contract Sum or Contract Time at a later date with respect to the associated change in the Work including without limitation on account of the "cumulative impact" of the associated change in the Work in combination with one or more other changes in the Work.

7.3.3 The Construction Manager shall prepare each Change Order form, with the assistance of the Architect, attach the supporting documentation, and issue the Change Order to the Contractor for signature.

7.3.4 If the Contractor is in agreement with the Change Order under GC subparagraph 7.3.1, the Contractor shall sign and return the Change Order to the Construction Manager within three (3) days of receiving it.

7.3.5 When the Construction Manager receives the Change Order signed by the Contractor, the Construction Manager shall recommend approval by signing the form and transmitting the Change Order and the revised Change Order Log to the Architect.

- 7.3.6 When the Architect receives the Change Order signed by the Contractor and the Construction Manager, the Architect shall recommend approval by signing the form and transmitting the Change Order and the revised Change Order Log to the Commission.
- 7.3.7 When the Commission receives the Change Order, the Commission shall sign the form accepting the Change Order, attach certification of funding, and transmit the Change Order to the Commission; or, if the Commission does not accept the Change Order, the Commission shall reject it and return it to the Construction Manager.
- 7.3.8 When the Change Order is signed by the Contractor, the Construction Manager, the Architect, the Commission, the fully executed Change Order modifies the Contract Documents and authorizes and directs the Contractor to proceed, and the Contractor shall promptly proceed with the associated change in the Work.

#### **7.4 WORK DIRECTIVES**

- 7.4.1 A Work Directive is a written order issued to the Contractor by the Construction Manager, with the Commission's approval, for a minor change in the Work not involving adjustment of the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents.
- 7.4.2 The Contractor shall promptly carry out each Work Directive if the Contractor agrees that the order does not involve adjustment of the Contract Sum or Contract Time.
- 7.4.3 If the Contractor reasonably believes that it would be entitled to an adjustment of the Contract Sum or Contract Time, or both, on account of a Work Directive, the Contractor, within three (3) business days after receiving the order, shall give the Construction Manager and the Commission written notice of the Contractor's position and shall not proceed with the subject Work without first receiving a Field Work Order or Change Order related to it.
- 7.4.4 The Contractor waives its right to an adjustment of the Contract Sum or Contract Time on account of a Work Directive by:
  - 7.4.4.1 Starting the Work which is the subject of the Work Directive; or
  - 7.4.4.2 Failing to give the notice described under GC subparagraph 7.4.3 within three (3) business days after receiving the Work Directive.

#### **7.5 DIFFERING SITE CONDITIONS**

- 7.5.1 "Differing Site Conditions" are either (1) subsurface or otherwise concealed physical conditions encountered at the Site that differ materially from the conditions indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature encountered at the Site that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents.
- 7.5.2 If the Contractor encounters a Differing Site Condition, the Contractor shall stop Work on that Differing Site Condition and give immediate written notice of the condition to the Commission and the Architect through the Construction Manager.

7.5.2.1 The Contractor's failure to give notice of the Differing Site Condition as required under GC subparagraph 7.5.2 shall constitute an irrevocable waiver of any associated Claim.

7.5.3 Promptly after receiving notice from the Contractor under GC subparagraph 7.5.2, the Architect and the Construction Manager shall investigate to determine whether the Contractor has encountered a Differing Site Condition. The Architect and the Construction Manager shall give written notice of their determination to the Commission, and the Contractor within ten (10) days after completing the investigation.

7.5.3.1 If the Architect and the Construction Manager determine that the Contractor has not encountered a Differing Site Condition and the Contractor does not agree with that determination, the Contractor shall initiate a Claim under GC Article 8 within ten (10) days of the date on which the Architect and the Construction Manager issue their determination.

7.5.3.2 If the Architect and the Construction Manager determine that the Contractor has encountered a Differing Site Condition, the Construction Manager shall process an appropriate Change Order, with the assistance of the Architect.

## **7.6 CHANGE ORDER COST OR CREDIT DETERMINATION**

7.6.1 The maximum cost or credit resulting from a change in the Work shall be determined as described below.

7.6.1.1 Proposals shall include the information required by GC paragraph 7.6.4.

7.6.1.2 A Unit Price Proposal shall only be valid when incorporated into the Contract by Change Order except for Unit Price Work included on the Bid Form.

7.6.1.3 The percentages allowed for overhead and profit include all Contractor Project costs relating to field or home office operations. Additional costs for overhead or profit shall not be allowed.

7.6.1.4 The maximum cost or credit includes all compensation for impact costs. Additional costs for impacts shall not be allowed.

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

7.6.3 The Commission may require notarized invoices for material costs and may audit the records of the Contractor and the Contractor's Subcontractors and Material Suppliers.

7.6.4 For each change in the Work, the Contractor shall furnish a detailed Proposal itemized according to the Pricing Criteria defined in this GC paragraph 7.6. Any Subcontractor or Material Supplier pricing shall also be itemized according to the Pricing Criteria defined in this GC paragraph 7.6.