

General Conditions of the Contract for Construction

Based upon AIA Document A201-97 with Maricopa County Community College District modifications

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES: CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

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Words that are shown in normal font are the original words from AIA A201-97 document, in the order and numbering shown. Words that have been italicized and bolded (in this fashion) have been added to the original document and words that have been struck through (in this fashion) have been deleted from the original AIA Document A201 wording. No other editing or differences in the document are intended.

Use of the AIA language and out edits in this document does not constitute approval or endorsement by the AIA of the modifications made to the original document.

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Last revisions:

5-06	major update
7-06	Changes to termination and schedule provisions
8-06	Removed requirement in Section 5 for use of AIA subcontract form with State AG amendments
11-07	Added Allowance/Contingency Use Authorization Form requirement
11-07	Reworked Termination/Suspension and added Right to Withhold, revisions to Article 14, change order mark-ups for CMAR
6-08	Legal Worker/E-Verify requirements added to Articles 5 and 13
11-08	Interest on late payments reinstated; Schedule of Value is true value
10-09	Change order mark-ups corrected, change orders subject to audit adjustment, construction against drafting party added
2-10	Contractor must administer warranty program
5-10	Change in Stored Material (bond facility) and allowed labor rates for change order work
10-10	Geo-tech disclaimer added
12-10	Lack of a CPM schedule waived claims for excusable delays; requirement for lien releases at payments removed
6-11 and 1-13	Final payment does not waive recovery of improper or over charges or billings found through an audit; addition of .2 of "Cost of the Work"
1-12	Detailed listing of damages amount required as part of claims; Change to 7 days for initial notification of claims in 4.3.2
10-12	Cap on total mark ups for all levels in change orders
11-12	CCIP requirements added to insurance
8-13	Duty to defend under 3.18. Indemnification removed
2-16	Changes to assignment of subcontracts
3-16	Required Notice and accounting of Direct Damages

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**ARTICLE 1
GENERAL PROVISIONS**

BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect pursuant to Paragraph 7.4. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements). *The geo-technical report is to be considered "Available Information". The geo-technical report is not a part of the Contract Documents and the Owner does not warrant the accuracy of the report's content. Contractors may read the report, draw their own conclusions, visit the site or perform their own testing as they deem necessary.*

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Subsubcontractor, or Supplier (except as provided in Paragraph 5.4), (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations of the Contractor under the Contract intended to facilitate performance of the Architect's duties.

1.1.3 THE WORK

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

1.1.4 THE PROJECT

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

1.1.5 THE DRAWINGS

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

1.1.6 THE SPECIFICATIONS

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

1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work that may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.1.8 "Architect"

The word "Architect" shall mean the registered design professional, Architect or Engineer, preparing the Contract Documents for this Work. The terms Architect, Engineer or Consultant may be used interchangeably. When the Owner provides the professional design services, the word "Architect" shall refer to the Owner.

1.1.9 MISCELLANEOUS DEFINITIONS

1.1.9.1 The term 'Product' as used herein includes materials, systems and equipment.

1.1.9.2 The term "Addendum" or "Addenda" as used herein means a change to the Contract Documents issued by the Architect with the Owner's approval prior to the execution of the Agreement.

1.1.9.3 When used with a Construction Manager at Risk or Design-Build delivery method, the word "Contractor" shall refer to the Construction Manager at Risk (CMR) or Design-Builder (D-B), and the word "bid" shall mean guaranteed maximum price (GMP), fixed cost, cost plus fee, or other pricing arrangement between the Owner and Contractor, as appropriate to the context of the word use within this document.

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1.2 EXECUTION, CORRELATION AND INTENT

5 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

10 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

15 1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. *Words and abbreviations that have well known local trade or technical meanings may be used in the Contract Documents in accordance with such recognized meanings.*

20 1.2.4 *The Contractor shall not make any changes from the Contract Documents without having first received permission from the Architect. Where detailed information is lacking, if work is required in a manner that makes it impossible to produce satisfactory work, or should discrepancies appear among Contract Documents, an interpretation should be requested in writing from the Architect and the Contractor shall obtain written information from the Architect before proceeding with the work.*

25 1.2.5 *In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:*

1. Addenda, with those of later date having precedence over those of an earlier date.

2. The Owner-Contractor Agreement.

3. The General Conditions of the Contract for Construction, with Owner modifications.

4. Drawings and Specifications.

30 *In case of an inconsistency between Drawings and Specifications or within either Document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation. Where dimensions are not shown, measurements shall be verified with the Architect and by measuring actual conditions of the work already in place. Do not scale drawings.*

35 1.2.6 *Should conflicts occur in or between Drawings, Specifications, Soils Report, Addenda, etc., the Contractor is deemed to have estimated on the more expensive way unless he has asked for and obtained a written decision from the Architect before submission of his Proposal as to which method or materials will be required. Except as provided by Subparagraph 1.2.10, in the event of a discrepancy in the Contract Documents, the intent of the parties shall be determined by interpreting the Contract Documents as a whole. Anything shown in one part and not in another part, or any other ambiguity or conflict in the Contract Documents shall be brought to the attention of the Architect who will determine what was intended from the Contract Documents, and so notify the Owner and Contractor.*

40 1.2.7 *All work and material shall be the best of the respective kinds specified or indicated. Should any workmanship or materials be required which are not directly or indirectly called for in the Specifications and/or shown on the Drawings but are consistent with the Contract Documents and reasonably inferable by them or industry standard practice, said workmanship or materials shall be included in the bid and the same as similar parts that are detailed, indicated or specified, or shall match or exceed the quality of existing for remodeling and restoration work. The Contractor shall understand the same to be implied and provide for it in his work as fully as if it were particularly described or delineated.*

45 1.2.8 *When published local, State or national standards, codes or specifications are cited in the Construction Documents as a standard to govern materials or workmanship, such standards, codes or specifications, or portions thereof, shall be as binding and have the full force and effect as though copied fully into these Specifications. Unless otherwise specifically stated, the standards, codes or specifications referred to shall be the latest edition or revision that is in effect on the date of the completion of the Contract Documents.*

50 1.2.9 *The quality of workmanship or materials introduced into the Work pursuant to 1.2.3 or 1.2.10 shall be the same as similar parts that are detailed, indicated or specified.*

55 1.2.10 *The Contractor guarantees that the Work will conform to the Contract Documents. Buildings shall be weathertight, watertight, and leak-proof at every point in every area, except where leaks can be attributed to damage to the building by external forces beyond the Contractor's control. The Contractor also shall repair or replace any damaged material, finishes or fixtures damaged as a result of this water penetration. The Work shall be mold free at the time of Final Completion.*

60 1.3 CAPITALIZATION

65 1.3.1 Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

70 1.4 INTERPRETATION

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

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1.5 EXECUTION OF CONTRACT DOCUMENTS

1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents, including, but not limited to, Paragraph 3.2. In entering into this contract agreement, the Contractor certifies and confirms his ability to construct the Project, within the specified time, based on his detailed review of the plans and specifications and site visitation, from information available to him from the plans and specifications and applicable code, and the Contractor represents that the Contract Documents are full and complete, are sufficient to have enabled the Contractor to determine the cost of the Work therein, and to enter into the Contract and that the Contract Documents are sufficient to enable it to construct the Work outlined hereunder, and that Contractor has no knowledge of any discrepancies, omissions, ambiguities or conflicts in the Contract Documents, and Contractor will notify the Owner and Architect promptly if it becomes aware of any such discrepancies, omissions, ambiguities or conflicts in the Contract Documents .

1.6 OWNERSHIP AND USE OF ARCHITECT’S DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect’s consultants are furnished to the Contractor for the purpose of performing the Work and are instruments of Service. through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect’s consultants, and unless otherwise indicated the Architect and the Architect’s consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights in addition to the copyrights. All copies of Instruments of Service, except the Contractor’s record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect’s consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared for the Owner by the Architect and the Architect’s consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect’s consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s, Owner’s, Architect’s consultants copyrights or other reserved rights.

1.6.1.1 The reuse, reproduction or publication by any method, in whole or in part, is prohibited. Title to the Drawings and Project Manual remains with the Architect without prejudice. Contact with these drawings and Project Manual shall constitute prima facie evidence of the acceptance of these restrictions.

1.7 SPECIFICATIONS

1.7.1 The misplacement, addition or omission of any letter, work or punctuation mark shall in no way damage or effect the true spirit, intent, or meaning of the Specifications.

1.7.2 The words “shown,” “indicated,” “noted,” “scheduled,” or words of like effect shall be understood to mean that reference is made to the drawings accompanying these specifications.

1.7.3 Where reference herein is made to products “as approved” or “as selected,” selection or approval shall be by the Architect.

ARTICLE 2

OWNER

2.1 GENERAL

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have the expressed authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. The Owner is the Maricopa County Community College District, designated as the “Owner” in the Owner Contractor Agreement and as referred to throughout the Contract Documents. Except as otherwise provided in Subparagraph 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner’s authorized representative.

2.1.2 The Owner shall furnish to the Contractor within 15 days after receipt of a written request information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the

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Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations *and reports of industry standard investigations of subsurface characteristics* for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. *The furnishing of these documents, or an industry standard investigation of subsurface conditions, shall not relieve the Contractor from its duties under the Contract Documents in general or in particular Subparagraph 1.5.2, 3.2.1 and 4.3.6, of these General Conditions.*

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2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness *to avoid unreasonable delay in orderly progress of the Work*. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

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2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work, *not to exceed the number of copies printed for bid purposes*.

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2.2.6 *The Owner shall promptly permit any actual or prospective Subcontractor or materialman to review and copy any and all surety bonds, and alternate securities for the project, pursuant to A.R.S. §39-121.01.*

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2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents *or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work with the Contract Time or disregards the instructions of the Owner or Architect, when based upon the requirements of the Contract Documents*, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. ~~except to the extent required by Subparagraph 6.1.3.~~

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2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may ~~after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies.~~ *Should the Contractor:*

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(a) *fail to achieve the Contract Dates of Substantial Completion or Final Completion, or*

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(b) *within seven days of the Contract Date of Substantial Completion, appear in the Owner's and Architect's judgment be unable to achieve Substantial Completion by the Contract date,*

the Owner, with certification by the Architect, may take over any or all of the Work with twenty-four (24) hours written notice. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services *and other expenses* made necessary by such default, neglect or failure. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect.~~ If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor *or his surety* shall pay the difference to the Owner.

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ARTICLE 3

CONTRACTOR

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3.1 DEFINITION

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

5 **.1** *The Contractor is responsible for quality control inspections of the Work to insure that it is being constructed in accordance with the Contract Documents. It is the express purpose of the Contract Agreement for the Contractor to provide to the Owner a fully constructed and operational facility built to the highest quality standards. The Contractor is responsible for construction in accordance with the Contract Documents to the highest quality standards, independent of observations by the Architect or Owner.*

10 **.2** *If the Contractor fails to provide timely or adequate quality control of the construction in progress, it may result in the performance of corrective work at a less opportune time. The time of discovery of a deficiency in the Work by the Owner or the Architect shall not negate the requirement for the Contractor to correct the deficiency to comply with the Contract Documents.*

15 **.3** *Should it become necessary for the Architect to incur additional costs during the course of construction, or subsequent to the final inspection, due to the Contractor's failure to maintain required quality control or schedule, or the Contractor's acts, omissions or negligence, the Architect will provide all necessary additional services at his standard hourly rate and will charge the Owner as part of an Additional Service Request, and such costs will be reimbursed by the Contractor or deducted from monies still due the Contractor. These costs are in addition to any liquidated damages.*

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

25 **3.2.1** Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered (*or which reasonably should have been discovered*) by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require. *If the Contractor proceeds with work affected by such errors, inconsistencies or omissions without receiving interpretation or clarification from the Architect, he does so at his own risk, and all costs, expenses and/or damages arising therefrom shall be at the Contractor's sole expense. Execution of the Contract by the Contractor is a representation that the Contract Documents are full, complete and sufficient to enable the Contractor to: (1) determine the cost of the Work; (2) construct the Work outlined therein; and (3) otherwise to fulfill all of its obligations hereunder; including, but not limited to, Contractor's obligation to construct the Work for the Contract Sum on or before the date(s) of Substantial Completion and complete all punch work and deficiency corrections on or before the date(s) of Final Completion, established in the Contract. The Contractor further acknowledges and declares that it has had sufficient opportunity to visit and examine the site, examine all physical and other conditions effecting the Work and is fully familiar with all of the conditions affecting the same. In connection therewith, Contractor specifically represents and warrants to the Owner that it has, by careful examination of the site, the Contract Documents, the geotechnical report and any other data provided by the Owner, satisfied itself as to: (1) the nature, location and character of the Project and the site, including, without limitation, the surface and subsurface conditions and structures and obstruction, both natural and man-made, and all surface and sub-surface water conditions of the site and the surrounding area; (2) the nature, location and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in a manner and within the cost and time required by the Contract Documents. Except as limited by A.R.S. Title 40, Chapter 2, Article 6.3 (Blue Stake), the Contractor shall be solely responsible for locating, prior to performing any work, all active public utility lines, telephone company cables and lines, sewer lines, water lines, gas lines, and electrical lines. The Owner will reasonably assist the Contractor in locating private utility lines within the Project area. The Contractor shall perform Work in such a manner as to avoid damaging any such lines, cables, pipes and pipelines. If the Contractor performs any construction activity knowing it or when it reasonable should know that the activity involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction*

55 **3.2.2** Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.

60 **3.2.3** If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor performed such obligations. ~~The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.~~

70 **3.2.4** *Neither the Owner nor the Architect assume any responsibility for an understanding or representation made by any of their agents or representatives prior to the execution of the Agreement unless: (1) such understandings or representations are expressly stated in the Agreement, and (2) the Agreement expressly provides that responsibility therefore is assumed by the Owner.*

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3.2.5 Failure of the Contractor to acquaint himself with all available information concerning conditions will not relieve him of the responsibility for properly estimating the difficulty, cost, effort or time of successfully and timely performing the Work.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention, *including all required coordination between suppliers, trades and subcontractors. This coordination shall include as necessary, meetings with suppliers or subcontractors, additional coordination drawings or details, etc., as may be required to assure that all of the work fits within the spaces provided, allowing adequate service and maintenance clearances and access, etc.* The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

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

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

3.3.4 *The Contractor's Superintendent, and when specifically required by the Owner, the Contractor's Project Manager (if one is assigned to the Project), shall be in attendance at the Project site not less than eight (8) hours per day, five (5) days per week, unless the job is closed down due to a general strike or conditions beyond the control of the Contractor, or unless and until termination of the Contract in accordance with the Contract Documents. It is understood that such Project Manager and Superintendent shall be acceptable to the Owner, and shall be continued in that capacity for the duration of the Work, unless such substitutions are necessitated by an individual's sudden illness, death or termination of employment. Except on small projects with the Owner's prior written consent, the Superintendent shall not be employed on any other project for or by Contractor, or any other entity during the course of the Work. On small projects with intermittent work, the Superintendent or a responsible individual representing the Contractor expressly approved by the Owner in writing, shall be present on site at all times that work is in progress.*

3.3.5 *In the event any of the following conditions shall exist, the Contractor shall require that his Project Manager and Superintendent be at the Project Site not less than ten (10) hours per day, six (6) days per week, as well as increasing the presence and level of manpower in all appropriate building trades and subcontractors:*

- 1. should Substantial Completion not be accomplished on schedule.*
- 2. should Final Completion not be accomplished on schedule.*
- 3. should the Progress Schedule indicate, in the opinion of the Owner, that the Contractor is fourteen (14) or more days behind schedule at any time during construction up until thirty (30) days prior to scheduled Substantial Completion.*
- 4. should the Progress Schedule indicate, in the opinion of the Owner, that the Contractor is seven (7) or more days behind schedule at any time during the last thirty (30) days prior to scheduled Substantial Completion.*

3.4 LABOR AND MATERIALS

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

3.4.2 The Contractor may make substitutions only with the *written* consent of the Owner, after evaluation by the Architect and in accordance with a Change Order. *Substitutions after award of contract shall be made only for reasons listed in the Instructions for Bidders.*

3.4.3 The Contractor shall *at all times* enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. ~~The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.~~ *Workers on the project and shall not employ or continue to employ any unfit person on the project or any person not skilled in the assigned work. The Contractor shall be responsible to the Owner for all acts and omissions of its employees, all tiers of its subcontractors, materials suppliers, and anyone whom the Contractor may allow to perform any Work, and their agents and employees, other than the Owner, the Architect and their officers, employees, agents and consultants, whom the Contractor may allow to come on the job site. In the event the Contractor personnel assigned to the Project are unable to construct the contract Work from the Contract Documents, the Contractor will replace those personnel, or request that his subcontractor replace those personnel, with individuals of sufficient ability, knowledge and experience to perform the Work if so requested by the Owner or his Representative. If the Contractor receives written notice from the Owner or Architect objecting to any Subcontractors or employees or anyone who is a hindrance to the proper or timely execution of the work, or is a disruption to Owner occupied areas adjacent to the Work, Contractor shall remedy such complaint by replacing personnel or Subcontractors without delay to the project and at no additional cost to the Owner. This provision shall be included in all contracts between the Contractor and the Subcontractor at all tiers.*

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3.4.4 All materials shall be shipped, stored and handled in a manner that will protect and ensure their new condition at the time of incorporation in the Work. After installation, all materials shall be properly protected against damage to ensure their being in the condition required by Subparagraph 3.5.1 when the Work is completed and accepted by the Owner.

3.4.5 The Contractor shall procure and furnish to the Owner all guarantees, warranties and spare parts or materials which are required either expressly, by implication or standard practice, by the Contract Documents or that are normally provided by a manufacturer.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage, unless the damage or defect occurs prior to fully completing all applicable and required training of Owner personnel and submittal of all relevant operating and maintenance documentation. If required by the Architect the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 The warranty provided in Paragraph 3.5 shall be in addition to and not in limitation of any other, or additional statutory, common law or manufacturer standard warranty which Owner may be entitled to and neither that warranty nor any other provision of this Construction Contract shall limit or impair Owner's ability to recover for damages which Owner may suffer as a result of the failure of Contractor to comply with the terms and conditions of the Construction Contract.

3.5.3 Neither the final payment nor any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents, or relieve the Contractor or its Sureties from liability, with respect to any warranties or responsibility for faulty materials and workmanship, or incomplete work. If the Contractor fails to timely remedy any defects or damage to the satisfaction of the Owner, the Owner may correct the Work or repair the damages, and the cost and expense incurred in such event shall be paid by the Contractor or be recoverable from the Contractor or its Surety, or offset against any amounts owing to the Contractor of this or other projects with the Contractor. Final or complete payment to the Contractor or surety made in error for incomplete work shall not be interpreted as or represent a waiver of the right to make a later claim to complete this work at no additional cost to the Owner.

3.5.4 The Contractor shall manage the warranty process on behalf of the Owner. The Owner will send warranty requests to the Contractor who then shall be responsible for contacting all subcontractors and suppliers, coordinating their timely service calls, coordinating among multiple sub-contractors where required, etc. The Owner will not be responsible for initial contact with, tracking of or coordination between subcontractors required to resolve a warranty request.

3.5.5 Notwithstanding any other warranty or disclaimer of warranty in this contract, the Contractor warrants that all products delivered and all services rendered under this contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any time-related data Year 2000 issues. This warranty shall survive the expiration or termination date of this contract. In addition, the defense force majeure shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issue.

3.6 TAXES

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. If tax rates change during the course of the contract, the contract shall be adjusted by change order to reflect the change in taxes for all work not billed and paid for as of the date of the new tax rate.

3.7 PERMITS, FEES AND NOTICES

3.7.1 All off-site improvements and off-site utilities are under the local municipal jurisdiction, including permits and reviews. On-site code jurisdiction, including plan review and construction inspection, is under the Arizona State Fire Marshal's Office, unless the local municipality has assumed jurisdiction under A.R.S. 34-461 for fire code enforcement only. This must be confirmed on a city by city basis for each project (as of January, 2002, these cities are: Avondale (EMCC), Chandler (CGCC), Glendale (GCC), Mesa (MCC, MCC Red Mountain and CGCC at Williams), Phoenix (GWCC, GCC North, PVCC, PC, SMCC), Surprise (RSC at Sun Cities). The Salt River Pima-Maricopa Indian Community has full building code jurisdiction for Scottsdale Community College only. Unless otherwise provided in the Contract Documents, the As applicable, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

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

3.7.3 Subject to the other terms and conditions of the Contract Documents in general, and Paragraphs 1.2.1, 1.5.2, 3.1.2, and 3.2.1, it is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

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3.7.4 If the Contractor performs Work ~~that he knows or should have known~~ knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the costs attributable to correction *including all penalties and fines*.

5 **3.8 ALLOWANCES AND CONTINGENCY(IES)**

3.8.1 The Contractor shall include in the Contract Sum all allowances *and contingencies* stated in the Contract Documents *or GMP*. Items covered by allowances *and contingencies* shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to who the Contractor has reasonable objection. *All uses of allowances and contingencies shall be reviewed and approved in advance by the Owner.*

3.8.2 Unless otherwise provided in the Contract Documents:

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

3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work. *Within Thirty (30) days of Notice to Proceed, the Contractor shall provide the Owner with deadline dates for each Owner- selected item in the allowance, or other Owner-supplied, Contractor-installed items.*

3.9 **SUPERINTENDENT AND PROJECT MANAGER**

3.9.1 The Contractor shall employ a competent superintendent, *project manager*, and necessary assistants who shall be in attendance at the Project site during performance of the Work *to provide appropriate supervision at all times during the progress of the Work. The superintendent and his assistants shall be fit and adequately experienced for their work and be capable of going to all locations where Work is being performed. The Owner shall have the right to require the Contractor to replace the project superintendent.* The superintendent *and project manager* shall represent the Contractor, and communications given to the superintendent *or project manager* shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

3.9.2 *Within ten (10) days of receipt of Notice of Award, Contractor shall submit the resume of the Contractor's Superintendent and project manager to the Owner. The Owner shall have seven (7) days upon receipt of the resume to disapprove the Superintendent. The Owner's acceptance or disapproval of the Superintendent and project manager shall not affect the bid. The Owner shall have the right to require the Contractor to replace the project superintendent or project manager. The Superintendent and project manager shall represent the Contractor and communications given to them shall be as binding as if given to the Contractor. When requested, the Contractor shall provide the Owner with complete work history profiles for other management staff to be accounted with this project for their review.*

3.9.3 *With the Owner's consent, a working foreman may be used in place of a full time superintendent on small projects. This foreman shall be on-site at all times that project Work is occurring.*

3.10 **CONTRACTOR'S CONSTRUCTION SCHEDULES**

3.10.1.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's Construction Schedule for the Work. The Schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work, *but at least monthly*, and Project shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. *The purpose of this schedule is to assure adequate planning and execution of the Work, and to facilitate evaluation of the progress of the Work. If the required schedules in the required form are not submitted as noted below, the Owner may withhold progress payments. Regardless of any Owner or Architect review of the Contractor's Schedule, the Contractor remains responsible for development and execution of the means, method and timing of performance reflected in the Contractor's Schedule.*

- .1 *Unless otherwise noted in the Contract Documents, at the time of the pre-construction meeting, the contractor shall present a schedule for the first thirty (30) days of the work. By the time of the second pay application, a fully developed project schedule ("Project Schedule") incorporating the previously submitted 30 day schedule, and schedule of all shop drawings and submittals shall be provided to the Owner and Architect. Submittal by the Contractor and review by the Owner or Architect of this full schedule may be a precondition for further payment at the Owner's option. No individual activity shown on the schedule shall be of longer duration than two weeks nor value greater than \$50,000. Greater value or longer activities exceeding two weeks duration shall be subdivided into specific two-week or shorter segments of work for scheduling and progress monitoring purposes only.*

- .2 *Schedules for all projects greater than eight months length or more than \$1,000,000 construction value shall be in critical path format unless specifically approved in writing by the Owner. The schedule shall indicate the dates for starting and completing various aspects of the Work, including submittal, approval, procurement, fabrication and delivery of major items, materials and*

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equipment as well as on-site construction activities. Where the Owner is supplying and/or installing items necessary for the Contractor's completion of his Work, these items shall be shown on the Contractor's schedule as well. Non-construction activities which impact the schedule, including submittals, inspections, procurement, etc., also shall be shown on the Schedule. Division One of the specifications may also spell out more detailed schedule requirements. Failure to submit a critical path schedule, whether or not officially waived by the Owner, waives the Contractor's right to time extensions based upon normally allowed excusable delays due to impacts created by the Owner or Owner's consultants, hidden conditions or any other factors that commonly extend the Substantial Completion date of the Work.

.3 If the proposed Project Schedule is not detailed or formatted in a satisfactory form to the Owner or Architect, the schedule shall be revised by the Contractor in accordance with the recommendations of the Owner or Architect and re-submitted for acceptance.

.4 An updated Project Schedule, including changes in the Critical Path as necessary, shall be submitted monthly in hard copy and electronic file in original software as a pre-requisite to approval of the Contractor's payment application at the Owner's option.

3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals. *The Contractor, upon award of the contract (or where Shop Drawings, Samples or the like are required, upon receipt of their approval), shall place orders for all materials, work, fabrication and equipment necessary to meet the submitted Progress Schedule. The Contractor shall keep the Architect and Owner informed and shall notify the Architect promptly in writing of any materials, work, fabrication or equipment which may not timely be available for the purposes of the Contract.*

3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. *The Contractor shall provide regular monitoring and updating of the Progress Schedule on a monthly basis, or more frequently as required by the Owner, or by the conditions of the Work.*

3.10.4 *If the Contractor proposes an early completion to the Work, ahead of the project's contract date of Substantial Completion, the Contractor shall notify the Owner in writing of this intention within sixty days of Notice to Proceed. With the notification, the Contractor shall provide a proposed early completion schedule that must include a reasonable, feasible and accurate logic or sequencing of all activities, feasible and accurate allocation of resources required to complete the Work, and must represent an embodiment of the entire scope of the Work. The Owner and architect will review the submitted material and the Owner reserves the right to reject this request. In order to accept early completion, the following must be done:*

1. *At the time the revised project schedule is furnished to the Owner, the Contractor also shall report to the Owner all actions by the Owner that are necessary to accommodate the changes made necessary by the early finish proposal.*

2. *The Owner also can accelerate the performance of his duties and be compensated for any inconvenience or additional expenses incident or arising out of such proposed early finish.*

If early completion is accepted by the Owner, a change order will be written incorporating the new completion date into the Contract and moving the contractual Date of Substantial Completion to the revised completion date shown on the Contractor's proposed early completion schedule. The Owner shall not be liable to the Contractor for any costs or damages should the Contractor be unable to complete the Work before the original Contract Milestone or Substantial Completion date.

3.10.5 *The Contractor shall monitor the progress of the Work relative to the Contract Documents, and promptly advise the Owner and Architect or any delays or potential delays, and update the accepted Project Schedule. In the event that a schedule or report indicates delays, the Contractor shall propose an affirmative recovery plan per Subparagraph 8.4.1. In no event shall reporting a delay or showing a revised schedule constitute an adjustment in the Contract time or sum unless such adjustment is agreed to in writing by the Owner and authorized by a written change order as provided for in Paragraph 7.2.*

3.10.6. *The Contractor shall maintain a daily log of construction activities for each calendar day of the Contract time on which work occurs. The Contractor specifically shall status all activities shown on the project schedule that are to be underway or are late as of the date of the report (complete, in progress, on/ahead or behind schedule) and document all activities at the project site including, but limited to weather conditions (showing high and low temperatures, amounts and time of precipitation, and site related impacts of weather conditions); soil or site conditions which may adversely affect the Work; hours or operations by the Contractor and subcontractors; number of Contractor and subcontractor personnel present and working at the site, by subcontract and trade; quantity and location of work accomplished by each trade each day; equipment active or idle at the site; description of the Work being performed that day; any unusual or special occurrences at the site; materials received at the job site by type and approximate quantity; all materials or systems tests requested and provided, along with who provided or observed these items; a list of all outside visitors to the site. The Contractor shall provide copies of all daily logs to the Owner monthly, or more frequently as directed by the Owner. The inclusion of information in the daily logs does not satisfy those reports, communications or notices required by the Contract Documents or be construed to be constructive notice of any events, claims, delays or other matters.*

3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

The Contractor shall maintain at the site for use and inspection by the Owner and Architect, one copy of all Drawings, Specifications, bulletins, addenda, Change Orders, field orders, rejected and approved shop drawings, submittals or samples; Architect's Supplementary Instructions, Requests for Information and other Contract related documents, and their modifications, if any, in good order and marked promptly by the Contractor to record all approved changes made during construction. The field working set of drawings referenced by the contractor and

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subcontractors in their daily work, as well as a record set Drawings and Specifications, shall be annotated regularly by the Contractor to reference all addenda, RFI's, ASI's and Change Orders, in order to maintain a complete, accurate and up to date set of Contract Documents for daily use by the Owner, Architect s, Contractor or Subcontractors.

5 **3.11.2** *All changes or interpretations to the Contract Documents shall be distributed promptly by the Contractor to all effected subcontractors or suppliers.*

10 **3.11.3** *The Contractor shall maintain on-site catalogue data, price lists, manufacturer's operating and maintenance instruction, schematics, certificates, warranties and guarantees as they relate to this Work.*

3.11.4 *The Contractor shall maintain as-built drawings and make them available with each monthly pay application for review by the Architect.*

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

15 **3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

20 **3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

25 **3.12.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

30 **3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

35 **3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals, which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor, may be returned by the Architect without action. *All shop drawings, submittals and samples shall be submitted to the greatest extent possible, within the first 60 days of the project. The Contractor shall allow a minimum of two reviews for each submittal, shop drawing or sample, allowing at least fourteen days for each review.*

40 **3.12.6** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

45 **3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. *The Contractor shall furnish approved Shop Drawings, Samples and Product Data to all Contractors, Subcontractors, and suppliers whose work is in any way related to the Shop Drawings, Samples or Product Data.*

50 **3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

55 **3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

60 **3.12.10** The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. If professional design services or certification by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Subparagraph 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose

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of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents. *The Contractor and his consultant shall review all Owner or Architect provided performance or design criteria for completeness and accuracy, based upon their experience, local practice and custom, and common engineering or design practice, and inform the Architect in writing of any discrepancies or omissions.*

3.12.11 After delivery of samples and materials, the Architect may make such tests as he deems necessary, with samples required for such tests being furnished by and at the cost of the Contractor.

3.12.12 If the Contractor is required to perform tests that due to climatic conditions must be delayed, the tests will be accomplished by the Contractor at the earliest possible date that the Contractor's guarantee of that item and other items dependent on its proper operation shall be in upon satisfactory completion of the test. The responsibility of the Contractor under this subparagraph is not abrogated upon the Owner's election to initiate final payment. Tests made to determine whether a material is an acceptable substitute shall be paid for by the Contractor.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13.2 *The Contractor is responsible for complying with all federal, State and local requirements and laws for temporary construction related issues related to dust control and erosion control for the site related to his Work. This includes all necessary permits, notices, plans (including Storm Water Pollution Prevention Plans), and termination of coverage, along with enforcement of all of these requirements with sub-contractors and suppliers.*

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with *prior* written consent of the Owner and of such separate contractor. ~~such consent shall not be unreasonably withheld.~~ The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.14.3 Any part of the finished Work damaged during installation or prior to Final Completion of the Work shall be repaired so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished to the satisfaction of the Owner, the damaged item or part shall be replaced by the Contractor at his expense.

3.15 CLEANING UP

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

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

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

3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

3.18 INDEMNIFICATION

3.18.1 ~~To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Paragraph 11.3, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's Consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, court costs and the cost of appellate proceedings, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense that is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the ~~any~~ the negligent acts or omissions of the Contractor, a its Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or~~

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expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a *any* party or person described in this Paragraph 3.18.

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

3.18.3 *The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's Consultants, and agents and employees of any of them provided such giving or failure to give is the primary, cause of the injury or damage. This Paragraph shall not limit the obligations of the Contractor to the Owner, State of Arizona, or any other political subdivision of the State of Arizona, when any one or more of the foregoing serves as the Architect or a sub-consultant to the prime Architect.*

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or engineering or an entity lawfully practicing architecture or engineering identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term Architect means the Architect or the Architect's authorized representative.

4.1.2 ~~The duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents may be restricted, modified, extended or discontinued by the Owner and Architect after notice to the Contractor unless the Contractor raises reasonable and timely objection to such change. Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.~~

4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor ~~has no reasonable objection and~~ whose status under the Contract Documents shall be that of the former Architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the ~~one-~~ two year period for correction of Work described in Paragraph 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations *and the status of the Work* (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1.

4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or related to the Contract. Communications by and with the Architect's *sub-*consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Architect *and the* Owner.

4.2.5 Based on the Architect's *observations and* evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review, ~~and certify,~~ *and recommend to the Owner* the amounts due the Contractor and will issue Certificates for Payment in such amounts *in accordance with the time frames set forth in A.R.S. § 41-2577.*

4.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or

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other persons or entities performing portions of the Work.

4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no *unreasonable* delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. *Where multiple submittals are inter-related, the Architect may hold the submittals until all related items are received and may be reviewed and processed as a coordinated group.* Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.42 *the Contract Documents*. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect approval of a specific item shall not indicate approval of an assembly of which the item is a component. *The Architect will require a minimum of ten (10) working days for review of submittals.*

4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion *in accordance with the requirements of the Contract Documents*, will receive, *review* and forward to the Owner, for the Owner's review, *acceptance*, and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

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

4.2.13 *Subject to the Owner's review*, \mp the Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.3 CLAIMS AND DISPUTES

4.3.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of ~~Contract terms~~, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and ~~matters in question~~ between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 **Time Limits on Claims.** Claims by either party must be initiated within 24 7 days after occurrence of the event giving rise to such Claim or within 24 7 days after the claimant first recognizes, *or reasonable should have recognized*, the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the *Owner's Project Manager* ~~other party~~.

.1 *If the Contractor incurs damages related to expenses caused by a delay for which the Owner is responsible, which is unreasonable under the circumstances, and which was not reasonable contemplated by the parties at time of formation of this Contract, then the parties shall resolve the Contractor's claim pursuant to A.R.S. § 41-2617. The Contractor shall notify the Owner in writing within five working days of such delay, specifying why the Owner is believed by the Contractor to be responsible for the delay and the percentage extent to which the Contractor believes the Owner is responsible. Failure to provide such timely notice constitutes a waiver of all rights under A.R.S. § 41-2617.*

.2 *Any and all claims for extensions and damages because of a delay shall be made in writing to the Architect and Owner not more than 21 calendar days from the beginning of the delay or within 21 calendar days after the Contractor first should have recognized the condition giving rise to the delay. The notice shall conform to the requirements of Subparagraph 8.3.*

4.3.3 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Subparagraph 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments *on Work unrelated to the claim* in accordance with the Contract Documents.

4.3.4 **Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents *or in the Geo-technical report* or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist

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and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 24 *three* (3) days after first observance of the conditions, *and in any case, prior to altering or removing the differing condition*. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein *shall be received by the Owner within seven (7) days of occurrence or discovery of the change* and shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6.

4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3. *All other claims shall be made per Paragraph 7.5.*

4.3.7 Claims for Additional Time

4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be **given** *received by the Owner within seven (7) days of occurrence or discovery of the change*. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.7.2 If adverse *and unusually severe* weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. *Claims for extensions in time due to unusual or inclement weather, or related muddy or site conditions, shall be made in conformance with the requirements of Paragraph 8.3. Claims for time extensions due to unusual or abnormal weather conditions will be granted only where the unusual weather conditions prevented execution of Work activities on the critical path of the Work. Unusual or inclement weather as used herein means weather that results in a minimum of a five hour delay or loss of work for at least 75% of the labor force working on critical path Work that day. The contract project completion time includes the following number of rain days for the applicable months within the project's duration: January-2 days; February- 2 days; March- 2 days; April- 1 day; May- 1 day; June-1 day; July- 2 days; August- 2 days; September- 1 day; October- 1 day; November- 2 days; December- 2 days. Claims for rain days must be received by the Owner by 10:00 a.m. of the day that the rain or muddy condition occurs. The appropriate number of rain days shall be shown as single critical path activity with proper duration immediately preceding the Substantial Completion milestone on the critical path project schedule. The duration of this activity will be reduced by the approved rain days encountered. Unused rain days for a particularly month will roll forward as part of the unused total for the entire project.*

4.3.7.3 *If an extension claim is made due to mud or other job site conditions related to the unusual weather, the Architect or other Owner's representative shall be notified on the day for which the site condition is being claimed to substantiate the condition(s). Claims for time extensions due to weather related mud or other site conditions will be granted only where the required notification is given and unusual weather conditions prevented execution of items within the critical path of the work or otherwise significantly hindered the accomplishment of work as defined in Paragraph 4.3.7.2. Partial day extensions may be granted when some portion of the daily work could be accomplished, though not at full efficiency or capacity.*

4.3.7.4 *Inclement weather delays, regardless of where they occur during the Work schedule, may receive extension of contract time but are otherwise non-compensable.*

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

4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

4.3.10 ~~Claims for Consequential Damages.~~ ~~The Contractor and Owner waive all claims against each other for all consequential damages arising out of or relating to this Contract. This mutual waiver includes:~~

~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons;~~

~~and~~

~~2—damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit other than anticipated profits arising directly from the Work.~~

5 This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Subparagraph 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

10 4.4 RESOLUTION OF CLAIMS AND DISPUTES

15 **4.4.1** ~~Decision of Architect.~~ Claims, including those alleging an error or omission by the Architect, but excluding those arising under Paragraphs 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect, shall be required as a condition precedent to *filing a Claim pursuant to Paragraph 4.5 related to the Contract*, ~~mediation, arbitration or litigation of all Claim between the Contractor and Owner arising prior to the date final payment is due unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.~~

20 **4.4.2** The Architect will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

25 **4.4.3** In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise that may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

30 **4.4.4** If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

35 **4.4.5** The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to ~~mediation and arbitration~~ *administrative resolution*.

40 **4.4.6** ~~When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.~~

45 **4.4.7** Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy *or taking over the Work*.

50 **4.4.8** ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or arbitration.~~

55 **4.4.9** *When a written decision of the Architect states that the decision is final, a demand for administrative resolution of the demand or claim per Paragraph 4.5, covered by such decision must be made within 30 calendar days after the date which the party making the demand receives the final decision. The failure to demand administrative resolution within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after administrative resolution has been initiated, such decision may be entered as evidence but shall not supersede the administrative resolution proceedings unless a decision is acceptable to all parties concerned.*

60 4.5 MEDIATION

65 **4.5.1** ~~Any Claim arising out of or related to the Contract except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5, shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration and the institution of legal or equitable proceedings by either party.~~

70 **4.5.2** ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless~~

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staved for a longer period by agreement of the parties or court order.

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

4.5 ADMINISTRATIVE RESOLUTION OF CLAIMS AND DISPUTES

4.5.1 Any claim or dispute between the Contractor and the Owner arising out of or relating to this Contract, which has not been resolved by the Architect in a manner acceptable to both the Contractor and the Owner shall be resolved pursuant to the Maricopa County Community College District Purchasing Procedures Manual, Section 902, "Contract Claims and Dispute Resolution", with the addition that if there is any cost incurred in providing an outside hearing officer, the District and the Contractor will split the cost in proportion of the actual award made versus the value of the claim being made. A copy of this section can be found at <http://www.maricopa.edu/purchasing/pmanual/902.htm>.

4.5.2 The parties agree that the Claims Procedures and Legal Remedies set forth or identified in this Paragraph shall be the exclusive means for resolving disputes arising under the Contract. Contractor acknowledges and understands that it must follow this process before instituting any judicial proceeding and that all decisions reached, along with their reasoning, shall become part of the legal record of any proceeding. In agreeing to this Contract Claims Process, all parties to the hearings and decisions agree that this process must be followed prior to any formal litigation and that all decisions reached, along with their reasoning, become part of the legal record of that litigation filing.

4.5.3 No suit or action shall be commenced hereunder by any claimant other than in the Arizona Superior Court for Maricopa County. The procedures described in this Paragraph for resolving claims shall be exhausted before any lawsuit may be filed.

4.5.4 Nothing in this Contract shall be construed to waive the requirements of Arizona Revised Statutes Sections 12-820 et seq. The Contractor shall file any notice of claim under this Contract within the time limits and in the manner specified in Arizona Revised Statutes Section 12-821.01.

4.5.5 Unless otherwise agreed in writing, the shall carry on the Work and maintain its progress during the resolution of any claim or controversy and the Owner shall continue to make payments that are due and owing to the Contractor in accordance with this Contract.

4.6 ARBITRATION

4.6.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5, shall after decision by the Architect or 30 days after the submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 4.5.

4.6.2 Claims not resolved by mediation shall be decided by arbitration which unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

4.6.3 A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

4.6.4 Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or Consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

4.6.5 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

4.6.6 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

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

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

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, *not more than thirty (30) days after the Notice to Proceed has been issued* ~~as soon as practicable after award of the Contract~~, shall furnish in writing to the Owner through the Architect *his final subcontractor list showing the names, addresses, phone numbers and Arizona Contractor license numbers* of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work, *and verify that all subcontractors are under contract to him for this project*. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, ~~after due investigation~~, has reasonable objection to any such proposed person or entity. ~~Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.~~

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

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

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitute. *The Contractor shall make no substitution of any Subcontractor, person or entity listed on the list of Subcontractors and materials suppliers submitted under Subparagraph 5.2.1, without the advance written consent of the Architect and Owner. The Contract Sum shall be decreased by the difference in cost occasioned by a substitution and an appropriate Change Order shall be issued. Upon request of the Owner, the Contractor shall furnish subcontract information, including contract values, for the original and proposed subcontractor. However, no increase in the Contract Sum shall be allowed for any substitution requested by the Contractor regardless of when this substitution occurs within the Contract period.*

5.3 SUBCONTRACTUAL RELATIONS

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

5.3.2 *Requirements within this Contract shall directly flow down to subcontractors, sub-subcontractors and suppliers, including, but not limited to, compliance with and knowledge of technical specifications and standards, change order documentation requirements, insurance, assignments, waivers and liens, rights and remedies for non-performance, warranties, notice requirements, Owner assumption of contracts and purchase orders, and audit provisions as defined in other sections of this Specification.*

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

.1 assignment is effective only after termination of the Contract by the Owner ~~for cause~~ pursuant to Paragraphs 14.2, 14.3 and 14.4; *Contractor's stopping or suspension of the Work for more than three days except for reasons expressly allowed by the General Conditions; or the Contractor's apparent or actual abandonment of the Work;* and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

5.4.3 *If the Owner terminates the Contract, requests and accepts assignment of subcontractors or suppliers, immediately upon demand by the Owner, the Contractor shall provide the Owner with copies of all applicable subcontracts and modifications thereof, and current information on the status of all accounts with the assigned subcontractors or suppliers, including records of payment, outstanding invoices, and reasons, if any, why any funds have been withheld from any subcontractor or supplier within seven Days of the Owner's request. A complete subcontractor list shall be provided to the Owner within forty-eight hours of a request following any of the circumstances stated in Paragraph 5.4.1.1.*

5.4 *Legal Worker Requirements: The provisions of Paragraph 13.11, as applicable, also shall be required of all subcontractors used in this Work. The Contractor shall inform all subcontractors of this provision and make it part of any sub-contractor agreement.*

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Paragraph 4.3.

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

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to ~~his~~ the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised. *If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.*

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

6.2 MUTUAL RESPONSIBILITY

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

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect *and Owner* apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, ~~except as to defects not then reasonably discoverable.~~

6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction by a separate contractor.

6.2.4 The Contractor shall promptly remedy damage ~~wrongfully~~ caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

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

6.3 OWNER'S RIGHT TO CLEAN UP

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

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ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

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

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

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

7.2 CHANGE ORDERS

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

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

Claims for additional compensation, on account of extra work provided, will not be recognized unless such extra work has been authorized in advance and in writing by the Owner and the Architect.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

7.2.2 *Change Orders - Ordinary: Contractor will be issued a proposed change order request describing intended change upon which, and within fourteen (14) days, he shall indicate his proposed price to be added or deducted from contract sum due to the change, supported by full and completely detailed estimates of cost by Contractor, subcontractor, vendor, or supplier, and any adjustment in time of final completion of the entire work which is directly attributable to changed work. Upon request by Owner, Contractor shall permit inspection of his and his subcontractor or supplier's original contract estimates, subcontract agreements or purchase orders relating to the change. If agreement is reached as to the adjustment in compensation for performance of changed work, but agreement is not reached as to the time adjustment for such work, then Contractor shall proceed with the work at the agreed price reserving to Contractor the right to further pursue his claim for time adjustment. If no claim or objection is made for the time extension at the time of the pricing agreement, no change in time will be granted or may be claimed.*

7.2.3 *When proposed change order contains deletion of any work and Owner and Contractor are unable to agree upon the cost thereof, the Owner's estimate shall be deducted from contract price unless within fifteen (15) days Contractor presents proof that the Owner's estimate is in error.*

7.2.4 *The Owner retains the right through a Construction Change Directive is issued pursuant to Paragraph 7.3, to order the Contractor to proceed with changes in the Work at any time. If the Contractor fails to submit his cost estimate within a seven (7) day period or more quickly if the Owner determines that the Work must proceed, or there is a failure to agree to such costs, the Owner has the right to order the Contractor, in writing, to commence work immediately and the contract price shall be adjusted in accordance with the Owner's estimate cost, unless, within fourteen (14) days following completion of changed work, Contractor presents proof that the Owner's estimate was in error.*

7.2.5 *The Contractor shall perform such extra work and charge the Owner at the reasonable and actual cost of labor and materials plus mark-ups as specified hereinafter. Such cost shall not exceed the local market cost for the same work. The cost to the Owner resulting from an increase in the Work shall be determined in one of the following ways:*

- .1 *by unit prices stated in the Contract Documents; or*
- .2 *by cost, as defined below, properly itemized and supported by sufficient substantiating data to permit evaluation, plus a fee, as identified in this Paragraph. Such costs shall be itemized by crafts as defined within the schedule of values and limited to the following items directly attributable to the change in Work:*
 - .a *actual costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;*
 - .b *actual costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;*
 - .c *actual rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others, required to accomplish only the change order work.*
 - .d *additional costs of supervision and field office personnel directly attributable to the increase in the Work; and*
 - .e *costs of premiums for all bonds and insurance, permit fees and sale, use or similar taxes relating to the increase in the Work*
- .3 *Labor rates used for change order work shall be no greater than the labor rates used to create the original bid or GMP pricing proposals, with the exception of cost of living increases or authorized overtime premium. The mix or percentage split*

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of trades (supervision, apprentice, skilled tradesman, etc.) used for change order work shall be the same as used to create the original proposal. Immediately upon request of the Owner or Architect to substantiate the proposed labor rates or mix, the Subcontractor shall provide his records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Work, along with their original bid or GMP cost proposal showing the detailed breakdown of materials and labor costs, including labor cost rates and mix of labor. Subcontractor shall preserve all such records for Audit purposes per Paragraph 13.10, or for such longer period as may be required by law. The Owner is entitled to audit Subcontractor's records pertaining to the direct costs of any Work performed on a cost-plus basis or unit price basis, including without limitation any proposals for extra work under this Article. In submitting pricing for change order work, the Contractor and Subcontractor certify that the prices, rates and information (Cost Data) used to price the change order are accurate, current and complete. Inaccurate, not current or incomplete Cost Data will result in a reduction of the contract price.

7.2.6 For credits to the Owner, the Contractor shall delete such work and credit the Owner at the reasonable and actual cost of labor and materials plus mark-ups as specified hereinafter. The credit to the Owner, resulting from a decrease in the Work shall be determined in one of the following ways:

- .1 by unit prices stated in the Contract Documents, or
- .2 by cost, as defined below, properly itemized and supported by sufficient substantiating data to permit evaluation, plus a fee, as identified in 7.2.6 and less costs of preparation of the change order. Such costs shall be itemized by crafts as defined within the schedule of values and limited to the following items directly attributable to the change in Work:
 - .a estimated costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
 - .b estimated costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
 - .c estimated rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others, required to accomplish the change order work;
 - .d additional costs of supervision and field office personnel directly attributable to the increase in the Work; and
 - .e costs of premiums for all bonds and insurance, permit fees and sale, use or similar taxes relating to the increase in the Work
- .3 The costs for labor and materials used in change orders shall be the same in added work as they are for deleted work, modified only to include quantity discounts or similar adjustments for materials, and added charges for premium time for labor costs.

7.2.7 When both additions and credits are involved in a single change order, the additions and credits before mark-ups shall be separately determined and the adjustment in Contract Sum shall be computed on the basis of the net cost before mark-ups. The mark-ups below then will be applied to either the net credit or net additional cost. Taxes, bonds and insurance shall always be based upon the current Contract Amount whether more or less than the original Contract Amount.

7.2.8 The individual mark-ups (or combined impact of the individual mark-ups) for all additional or extended overhead plus the profit/fee shall not exceed the following percentages, based upon costs as defined in 7.2.5 through 7.2.7:

- .1 for each Subcontractor involved for any Work performed by its own forces, 10 percent of the cost of actual materials, installation labor and equipment rental to complete the work;
- .2 for each Subcontractor involved for any Work performed by its Sub-subcontractors or suppliers, 5 percent of the sub-Subcontractor's cost;
- .3 for the Contractor who is performing the Work under a competitive bid Agreement,
 - .a for any Work performed by its own forces, 10 percent of the Contractor's own cost;
 - .b for any Work performed by a Subcontractor, 5 percent of the Subcontractor's cost;
- .4 for the Contractor who is performing the Work under a Construction Manager at Risk Agreement, the combined mark-up for overhead and fee shall be the lesser of those stated in 7.2.8.3 above, as appropriate for the Work provided, or the combined mark-up for overhead and fee in the Contractor's original GMP proposal (Exhibit H)
- .5 The total of all mark-ups for all levels stated in .1 to .4 above shall not exceed 21% for subcontractor change orders in traditional bid project, 15% for change order work performed by the Contractor's own forces in traditional bid projects and 19% for change orders in GMP arrangements.
- .6 Sales Tax: Statutory amount based upon the net contract change;
- .7 Insurance: Actual premium cost of the net contract change, based upon the actual cost of labor, materials and equipment, applied at the same rate as the original contract sum;
- .8 Bond: Actual bond cost of the net contract change, based upon the actual cost of labor, materials and equipment, overhead, profit, and sales tax.

The markup for overhead listed above for the Contractor and subcontractors shall include the following areas: additional general conditions field costs including but not limited to job-site supervision time or supervision labor, project management (whether on-site or based in the office), superintendence, small tools, "consumables" and incidentals; field and all home office general and administrative expenses, including overhead of all kinds; project insurance; construction vehicles, equipment, trailers, etc., normally provided to or used by field personnel directly related to this change work; estimating, change order, as-built or other document preparation; warranty reserve; and all other indirect expenses.

Inferred additional costs such as "allocable home office overhead" (either by Eichleay, percentage or other mark-up methods) related to contract delays or extensions, home office costs that are not solely dedicated to the Work, "learning curves" and "productivity factors"

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are not allowable costs for change orders or damages related to termination of the Agreement.

7.2.9 In order to facilitate checking of quotations for additions or credits, all proposals shall be accompanied by a complete itemization of all proposed costs including labor, materials, equipment and subcontracts. Where significant cost items are subcontracts, their costs shall be itemized also. In no case will a change involving over \$2,500.00 be approved without such itemization.

7.2.10 If the Owner approves a change, a written Change Order shall be forwarded to the Contractor adjusting the Contract Time or the Contract Sum, or both, as approved. Except as modified by the Change Order, all terms and conditions of the Contract, as previously modified, remain unchanged and in full force and effect. With the exception listed at the end of this paragraph and within 7.2.2, all parties agree that this Change Order is a final and equitable adjustment of the Contract Time and Contract Sum, and constitutes a mutual accord and satisfaction of all claims, current and future, of whatever nature caused by or arising out of the facts and circumstances surrounding this Change Order including, but not limited to, direct, indirect and consequential costs; additional time for performance; and the impact of the change specified in this change order alone or taken with other changes, on the unchanged Work. Any such claim not presented by the Contractor for inclusion in the Change Order is irrevocably waived. Change orders will not be accepted "subject to later claims or adjustments" for either cost or time. Contractor agrees that if the Owner determines that the cost and pricing data submitted for a change order, whether approved or not, was inaccurate, incomplete not current or not in compliance with the terms of the General Conditions and Agreement, an appropriate price adjustment will be made. Such post-approval contract price adjustments also will apply to all levels of contractors and/or sub-contractors and to all types of change order proposals.

7.2.11 Procedure if Failure to Agree to Cost: If the Owner and Contractor fail to agree to the cost of proposed change order, the Contractor, upon written order or Construction Change Directive from the Owner, shall proceed immediately with the changed work. Contractor shall maintain daily job record in quadruplicate containing detailed summary of labor, materials, and equipment required for the changed work. Upon being signed and agreed to by Owner or Architect and Contractor at end of each day's performance, it will become the basis for payment for the changed work, but such agreement shall not preclude subsequent adjustment based upon later audit by Owner. Upon completion of the work under the change order, Contractor shall submit his invoice therefore containing only the items of labor, materials, and equipment that are in addition to requirements of the contract and as approved by both parties, together with allowable mark-ups.

7.2.12 Emergency Changes: Changes in the work made necessary due to unexpected or unforeseen site conditions, discovery of errors in Drawings or Specifications requiring immediate clarification in order to avoid serious work stoppage, or changes of a kind where extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by Owner are types of emergency changes which may be authorized by Owner in writing to Contractor. Contractor shall commence performance of emergency change immediately upon authorization. Daily job records shall be maintained. After receiving emergency authorization, Contractor shall submit detailed estimate of cost and proposed extension in contract time based on daily job records in same manner as required above. Daily job record shall constitute the basis upon which Contract price shall be adjusted in same manner as set forth above. In the event agreement is not reached as to time adjustment, it shall not affect any agreement as to Contract price adjustment, but Contractor shall have the right to pursue claim for time extension.

7.2.13 Contract time shall not be adjusted unless a change affects the critical path of the Work, per the most recent approved critical path schedule. An analysis of the changes in the critical path of the Work schedule, using contemporaneous time impact analysis such as a "Time Impact Analysis", "fragnet" or similar analysis, must be submitted as part of the change request in order to consider a Contract time adjustment. If the Owner and Contractor do not agree with an adjustment in Contract Time or the method for determining it, the adjustment or the method shall be recommended by the Architect to the Owner for final resolution in accordance with the Contract Documents.

7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods upon the methods outlined in Paragraph 7.2.

- 1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- 2 unit prices stated in the Contract Documents or subsequently agreed upon;
- 3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- 4 as provided in Subparagraph 7.3.6.

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

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

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect in accordance with Paragraph 7.2. on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present,

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in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following

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

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

7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment, accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remain in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 4. *Payments for Construction Change Directive items, when added to contract work payment shall not exceed the authorized Contract Sum. Final payment on a Construction Change Directive shall not occur until incorporated in a Change Order.*

7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8

TIME

8.1 DEFINITIONS

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

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

8.1.3 The date of Substantial Completion is the date **certified recommended** by the Architect *and agreed to by the Owner* in accordance with Paragraph 9.8.

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

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work *and any claim not timely made is barred.*

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. ~~Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.~~ *The Owner will issue a Notice to Proceed that will establish the Date of Commencement for the Work. All required insurance shall be in effect by this date.*

8.2.3 ~~The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.~~ *employ, supply or cause to be supplied a sufficient force of workers, materials and equipment and shall prosecute the Work with such diligence so as to maintain the rate of progress indicated on the most recently reviewed Progress Schedule and as needed to achieve both Substantial and Final Completion within the Contract time. Failure to meet this requirement may be considered by the Owner to be default of the Contract by the Contractor.*

8.2.4 *The Work shall commence on or before the tenth day after receipt of the 'Notice to Proceed' issued by the Owner. The Contractor agrees that said Work shall be prosecuted regularly, diligently, and without interruption at such rate of progress as will insure Substantial and Final Completion of the Project no later than the calendar days from the date of 'Notice to Proceed' as stated on the Calendar of Events or in the Contract.*

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8.2.5 It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning, rate of progress, and the time for completion of the Work to be done hereunder, are ESSENTIAL CONDITIONS of this Contract. The Contractor also shall consider that the Owner needs the complete use of these facilities as quickly as possible.

8.3 CLAIMS FOR CHANGES IN COST, DELAYS AND EXTENSIONS OF TIME

8.3.1 Except as otherwise expressly provided in the Contract Documents, if the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay are justifiable, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Claims relating to cost or time shall be made in accordance with applicable following provisions: of Paragraph 4.3

.1 If the Contractor wishes to make a claim for an increase in the Contract Sum and/or Time Extension, he shall give the Owner written notice thereof within seven (7) calendar days after the occurrence of the event giving rise to such delay claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed. No claim shall be valid unless so made. Contractor hereby waives all claims and is barred from recovery if proper notice is not provided. Any change in the Contract Sum resulting from such claim shall be authorized by a Change Order. Resolution of Claims and Disputes shall comply with Section 4.5.

.2 In every such written claim, the Contractor shall provide the following information:

- a. Nature and cause of the delay;
- b. Date (or anticipated date) of commencement of delay;
- c. Activities on the progress schedule affected by the delay and/or new activities created by the delay and their relationship with existing activities;
- d. Identification of person(s) or organization(s) or events(s) responsible for the delay including weather reports;
- e. Anticipated extent of the delay;
- f. Recommended action to avoid or minimize the delay, including the contractor's efforts to resolve the issue, mitigate the damage, cost or other impact, or minimize the delays undertaken to the date of the extension request.
- g. Recommended solution or action required by the Contractor.

.3 Any claims for extensions of time for delays in transportation or for failures of suppliers or subcontractors shall be supported by facts demonstrating that the delays are beyond the Contractor's control, including his efforts to overcome such delays.

.4 All costs related to delay claims by the Contractor must be supported by records and documentation demonstrating the actual cost directly related to the delay or time extension. The final claim must include an itemized statement of the details and amounts of the proposed damages claim. Extended, under-absorbed or unabsorbed home office overhead will not be a allowed in cost adjustments to this Contract or as evidence of value of such adjustment, per Paragraph 7.2.8 or Article 14.

8.3.3 This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. The Owner's exercise of any of its rights under the Contract Documents regarding changes in Work, regardless of the extent or number of changes, or the Owner's exercise of any of its remedies of suspension of the Work or requirements of correction or re-execution of any defective work shall not be construed under any circumstances as intentional interference with the Contractor's performance of the Work, or as creating a cardinal change in the Work.

8.3.4 Liquidated Damages: If the Contractor neglects, fails or refuses to Substantially Complete the Work within the contact time(s), or any extension granted by Change Order, then the Contractor and the Contractor's surety shall, as part of the consideration for the award of this contract, pay the Owner the liquidated damages, the amounts listed in the Owner Contractor Agreement, for breach of contract, for each and every calendar day that the Contractor fails to complete the Work.

For each consecutive calendar day that the Work remains incomplete after the date established for Final Completion, the Owner shall make a reduction in the Contract Sum as shown on the Owner-Contractor Agreement as liquidated damages, This amount is the minimum measure of damages and adverse impact that the Owner will sustain by failure of the Contractor to complete all remaining remedial work, correct deficient work, clean up the project and other miscellaneous tasks as required to complete all work specified. This amount is in addition to the primary liquidated damages for Substantial Completion prescribed above.

These sums are agreed upon as a reasonable and proper measure of damages which the Owner will sustain per day by failure of the Contractor to complete Work within time as stipulated; it being recognized by the Owner and the Contractor that the injury to the Owner that could result from a failure of the Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall costs for liquidated damages be construed as a penalty on the Contractor. The liquidated damages are in addition to Architect costs or other Owner incurred direct costs or damages resulting from Contractor delays, improper workmanship, additional inspections, failure to complete close-out documents, etc., as described elsewhere in these General Conditions. Partial occupancy or partial Substantial Completion of areas not expressly specified and/or scheduled in the original Contract shall not obligate the Owner to pro-rate the liquidated damages assessed to the Project. The Owner shall make a reduction in the Contract for the liquidated damages assessed, which may, at the Owner's discretion, be deducted as incurred as an offset against any progress payments due.

If the Agreement provides liquidated damages associated with milestone dates in addition to Substantial Completion, and milestone activities

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remain incomplete beyond the respective milestone dates, the liquidated damages associated with each milestone date shall be additive from that date until completion of the milestone activity.

8.3.5 In the event the time for construction extends beyond the time allowed by Contract through no fault of the Owner or Architect the Architect will charge the Owner at his standard hourly rate for time expended in administering the contract for construction as the Owner's Representative. The Owner may, at its option, deduct such costs from the moneys still due the Contractor, or recover as damages. These costs are in addition to any liquidated damages.

8.3.6 The Owner and Contractor acknowledge that construction projects are complex and subject to questions and changes. The Contractor shall make provision for Requests for Information, Supplemental Instructions, submittals and resubmittals of material, change order requests, pricing and change orders, as well as the response and management time required for these items, will occur. Claims for impacts or extensions based upon the number of RFI's, etc., will not in and of itself constitute a valid claim for delays or extensions. An extension based upon this claim requires the Contractor to demonstrate that the number of documents, modifications or requests processed for this job is significantly in excess of the amount processed for other projects of like size, scope, budget, complexity or response time; and that they are not the result of Contractor negligence, improper work, failure to coordinate or adequately plan work, failure to locate information already in the Contract Documents, etc. The cost, time or effort to prepare and process these items shall be considered to be included the basic cost of the Work or overhead allowed in the change order work.

8.4 RESPONSIBILITY FOR COMPLETION

8.4.1 The Contractor shall furnish such manpower, materials, facilities, and equipment and shall work such hours, including night shifts, overtime operations and Sunday and holidays, as may be necessary to insure the prosecution and completion of the Work in accordance with the reviewed and currently updated progress schedule. If Work in place falls behind the currently updated and reviewed schedule by seven (7) days or more and it becomes apparent from the current schedule that the Work will not be completed within the Contract Time or that the performance of the Work is not satisfying the requirements of the accepted schedule, the Contractor agrees that he will, as necessary, take some or all of the following actions at no additional cost to the Owner to improve his progress and expedite the progress of the Work:

1. Increase manpower, equipment or facilities in such quantities and crafts as will substantially eliminate, in the judgment of the Architect, the backlog of work;
2. Increase the number of working hours per shift, shifts per working day, working days per week, the amount of equipment, or any combination of the foregoing, sufficient to substantially eliminate, in the judgment of the Architect, the backlog of Work; and,
3. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

Such measures shall continue until the progress of the Work complies with the state of completion required by the accepted Construction Schedule. In addition, the Architect may require the Contractor to submit additional information or a revised schedule demonstrating his program and proposed plan to make up lag in scheduled progress and to ensure completion of the Work within the Contract Time. If the Architect finds the proposed plan not acceptable, he may require the Contractor to submit a new plan. If the actions taken by the Contractor or the second plan proposed are not satisfactory, the Architect may require the Contractor to take any of the actions set forth in this paragraph 8.4 without additional cost to the Owner to make up the lag in scheduled progress. The Owner's right to require additional or extraordinary measures is solely for the purpose of ensuring the Contractor's compliance with the accepted Construction Schedule, and does not represent a constructive acceleration of the schedule or Work. In no event shall the Owner have any control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, notwithstanding rights or authority granted elsewhere in these Specifications.

8.4.2 Failure of the Contractor to substantially comply with the requirements of this Paragraph 8.4 may be considered grounds for determination by the Owner, pursuant to Article 14, that the Contractor is failing to pursue the Work with the diligence required to ensure its completion within the time specified, and may result in default of this Contract.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect shall be used as a basis for reviewing the Contractor's Applications for Payment. Where multiple buildings are under this single Contract, a separate, detailed Schedule of Values must be provided for each building within the Payment Application.

9.2.2 For the purposes of the Schedule of Values, the Contractor certifies that the cost or value listed for the line item represents the true and accurate cost of the proposed Work. The value shown can be used for any future change order or bond valuation adjustment based upon the scope of the work proposed within the line item.

9.3 APPLICATIONS FOR PAYMENT

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5 **9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting Retainage if provided for in the Contract Documents.

10 *Except to the extent otherwise provided by Statute, including A.R.S. § 41-2577, payments on account of this Contract will be made monthly as Work progresses. The Contractor shall review with the Architect in the field, on or about the 25th day of the month, his tentative Application for Payment for that month. The form for application for payment shall be AIA Document G702 'Application and Certificate for Payment' supported by AIA Document G703 'Continuation Sheet,' and shall be submitted, after the above review, to the Architect on or before the first day of the following month. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, and reflecting retention if provided for elsewhere in the Contract Documents. If used, certificates of deposit shall be submitted along with the Pay Application. Requests for payment for stored materials shall be submitted per Subparagraph 9.3.2.*

15 **9.3.1.1** As provided in Subparagraph 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determination of the Architect, but not yet included in Change Orders as long as such payment when added to the Contract work payment does not exceed the authorized Contract Sum.

20 **9.3.1.2** Such applications may not include requests for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay. *The Contractor shall notify the Owner in writing at the time the Payment Application is submitted if this payment to an alternate sub-contractor or supplier is intended.*

25 **9.3.1.3** *Until final payment, the Owner will pay ninety-percent (90%) of the amount due the Contractor on account of Progress Payments.*

30 **9.3.1.4** *When the construction value of Work in place exceeds fifty percent completed, one-half of the amount retained, including any securities substituted under subparagraph 9.6.8, shall be released to the Contractor upon the Contractor's request and the Architect's and Owner's concurrence. This reduction in retention may be made provided the Contractor is making satisfactory progress on the Work and there are no specific causes or claims requiring that a greater amount be retained. After the contract value is fifty percent complete, five percent of the amount of any subsequent progress payments made under the Contract will be retained or covered through substitute securities, providing the Contractor continues to make satisfactory progress. If at any time the Owner determines that satisfactory progress is not being made or that new claims or causes have arisen, ten percent retention will be reinstated immediately and retroactively for all progress payments made under the Contract. No reduction in retention shall be made without the written consent of the Surety.*

35 **9.3.1.4** *At least monthly, and more often if requested, an "Allowance and Contingency Use Authorization" form shall be filled out and signed by the Owner, Architect and Contractor that describes every use of allowances and contingencies made that month. Use of any and all allowance or contingency funds, including those included in the Contractor's contract, require this three party approval. This form should be attached to the monthly payment application.*

40 **9.3.2** Unless otherwise provided in the Contract Documents, payments shall may be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site in a bonded warehouse or location approved by the Owner. at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures listed below and satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. *Payments may be made on account of stored material or equipment not included in the Work but delivered and suitably stored on or off the site as follows:*

45 *.1 Payment for stored materials may be made only for materials, equipment or fabrications produced specifically for this Project. Off-the-shelf, generic or commonly stocked warehouse materials shall not be eligible for stored materials payments.*

50 *.2 All requests for payments on stored materials shall be accompanied by supplier invoices clearly showing the item(s) description and quantities being requested for stored materials. Evidence of payment by the subcontractor or contractor for the materials shall accompany the invoice. The Owner or Architect will review all items to confirm quantities and materials lists.*

55 *.3 Payments will be made for only the actual cost of the material, equipment or fabrication, less any early payments discounts, taken by the contractor or subcontractor. No additional costs or mark-ups, handling or storage, coverage or stowage, etc., costs will be approved.*

60 *.4 Material, equipment or fabrications paid for as stored materials either shall be stored on the Project site, protected from damage and weather, in covered or secured storage as needed; or stored in an off-site bonded warehouse. Other locations may be approved at the sole discretion of the Owner.*

65 *.5 All material and Work covered by paid partial payment shall thereupon become the sole property of the Owner. A letter passing title to the Owner with these conditions shall accompany the pay application. The Contractor's insurance shall continue to cover the stored materials, whether stored on or off site.*

70 *.6 Nothing in these subparagraphs shall be construed to relieve the Contractor of sole responsibility for the care and protections of materials, equipment, fabrications or Work upon which payments have been made, restoration of any damaged Work or materials, or as a waiver of the right of the Owner to require fulfillment of all terms of the Contract Documents subject to Article 11.*

5 **9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

10 **9.3.4 Pre-Payment and Deposits**

No prepayment or advance deposit will be made unless the prepayment or deposit is in the best interest of the Owner. The Owner has sole discretion to determine its "best interest" or other circumstances that may warrant pre-payment or deposits.

15 **9.3.5 "Mobilization" or "start up" costs may be paid, or partially paid, at the sole discretion of the Owner and must represent actual Work or services provided.**

20 **9.3.6 Bonds and insurance will be paid for upon purchase. General Conditions will be paid either in equal amount each month over the Contract time for the Work or at the same percentage as the completion of the Work, at the Contractor's option. Once selected, the payment approach for General Conditions will remain for the balance of the Work. Contractor Fee will be paid at the same percentage of completion of the Work for the month's payment application. Sales taxes will be paid in equal proportion to the total Work approved as of the date of the Pay Application.**

25 **9.4 CERTIFICATES FOR PAYMENT**

30 **9.4.1** The Architect will within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect ~~determines~~ *recommends* is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

35 **9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, ~~to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents and that the Contractor is entitled to payment in the amount recommended by the Architect. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.~~ However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. *Submittal, review and approval of monthly status photographs, updated as-built drawings, updated project schedule and submittal of daily field reports, as required by other sections of the General Conditions or Specifications shall be a condition precedent to approval of the pay application.*

40 **9.5 DECISIONS TO WITHHOLD CERTIFICATION**

45 **9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary *and required by A.R.S. § 41-2577* to protect the Owner, if in the Architect's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify *or decertify* the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2 because of:

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- 60
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- .1** defective Work not remedied, *or failure to begin remedial action to repair defective work within five (5) working days following written notification;*
 - .2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
 - .3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
 - .4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
 - .5** damage to the Owner or another contractor;
 - .6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
 - .7** persistent failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding certification are removed *to the satisfaction of the Architect, with the Owner's agreement*, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

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

9.6.2 *As required by A.R.S. § 41-2577*, the Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

~~9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.~~

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

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

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

9.6.8 At the Contractor's option, in lieu of the retention required in this section, the Owner will accept as a substitute an assignment of time certificates of deposits at banks licensed by this state, securities guaranteed by the United States of America, securities of this State, or shares of savings and loan institutions authorized to transact business in this State, as provided by A.R.S. § 35-155 or § 41-2576 and § 41-2577, in an amount equal to the retention required under Paragraph 9.3 of all payments, which shall be in the name of the Owner and be retained by the Owner as a guarantee for complete performance of this Contract. Copies of the certificates of deposit, securities or shares proposed for a particular Payment Application must be received by the Owner prior to the Owner's processing the Application for Payment, and the original must be received by the Owner prior to release of payment to the Contractor. Once an option has been selected by the Contractor- securities or retention- no change will be made through the balance of the Work.

9.6.9 In the event the Owner accepts substitute securities as described in this Paragraph in lieu of the retention required under Paragraph 9.3, the Contractor shall be entitled to receive all interest or income earned by such securities as it accrues, unless Owner claims and damages exceed the value of the securities. All costs or compensation associated with the set up or administration of the securities shall be paid from the interest accrued on those securities.

9.6.10 All such securities in lieu of retention shall be returned to Contractor by the agent within sixty (60) days after completion and final acceptance by the Owner of all material, equipment, work, Owner training, close-out documents and release processes covered by the contract if the contractor has furnished the agent satisfactory receipts for all labor and material billed and final waivers of liens from any and all persons holding claims against the Work. In no event shall the agent accept a time certificate of deposit of a bank or shares of a savings and loan institution in lieu of the retention specified unless accompanied by a signed and acknowledged waiver of the bank or savings and loan association of any right or power to set off against either the agent or the Contractor in relationship to the certificates or shares assigned.

9.6.11 In any instance where the agent has accepted substitute security as provided in paragraph 9.6.8., any subcontractor undertaking to perform any part of such public work shall be entitled to provide substitute security to the Contractor upon terms and conditions similar to those described in paragraph 9.6.8., and such security shall be in lieu of any retention under the subcontract.

9.6.12 When the Work has been fully completed in a satisfactory manner and the Architect has issued a final Certificate for Payment, the Contractor shall receive the full amount of funds remaining in the account, including the net balance of the interest paid to the account, but less any liquidated damages, interest, costs or claims that may have incurred by the Owner, which shall be retained by the Owner.

9.6.13 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor, the Contractor shall be paid as provided in Subparagraph 9.10.3.

9.6.14 The Owner may offset any sum due from the Contractor for claims, liquidated damages or amounts from any other Contracts or agreements with the same Contractor.

9.6.15 The Owner retains the right to withhold and retain funds, as necessary to protect the Owner's or surety's interests, to offset the

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Contractor's defective or incomplete performance in the event that the Owner incurs, or may incur, additional costs to remedy this performance. The balance of payments and retention will be released following resolution of the performance issues, reduced by any costs incurred by the Owner to remedy the performance.

5 9.6.16 The Owner's initial notice to the Contractor of deductions made against payment applications or deductions assessed against
remaining Contract payment balance resulting from assessment of direct damages or liquidated damages shall constitute continuing notice of
claims or assessments. Additional claims or notices need not be provided for similar reductions, offsets or assessments. The Contractor may
10 request information regarding the specific assessment or reduction, including total amounts, balances and back up information, but the Owner is
not required to provide on-going accounting or supporting material to the Contractor lacking any request to do so.

9.7 FAILURE OF PAYMENT

15 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of
the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in
the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven
additional days' written notice to the Owner and Architect stop the Work until payment of the amount owing has been received. If
20 through no fault of the Contractor, the Architect does not issue a Certificate for Payment within the time frames established by A.R.S. § 41-2577
after the receipt of the Contractor's complete Application for Payment, accompanied by all required supporting materials or if the Owner does not
pay the Contractor within twenty-one days after the Contractor's complete and approved Application is received by the Owner, or twenty-one days
after a final decision is made pursuant to administrative resolution of claims and disputes, then the Contractor may, upon fourteen additional
day's written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall
be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of
25 shut-down, delay and start-up, plus interest as provided for in by A.R.S. § 41-2577 the Contract Documents.

9.8 SUBSTANTIAL COMPLETION

30 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work, or designated portion thereof that the Owner
agrees to accept separately, is sufficiently complete in accordance with the Contract Documents as recommended by the Architect so the
Owner can occupy or utilize the Work for its intended use. Within seven days of the Contractor's written request for a Substantial
Completion inspection, the Architect will notify the Contractor of the time and date that the inspection of the Work or designated portion will be
held.

35 9.8.2 For the purposes of this Contract, the term "beneficial occupancy" is not recognized as having any meaning or impact on defining the
meaning or Date of Substantial Completion. Full or partial occupancy or use of the facility by the Owner shall not, in and of itself, constitute or be
sufficient for determining a date or state of Substantial Completion. All of the following are conditions precedent for Substantial Completion:

- 40 .1 Inspection, approval, occupancy and other permits issued by regulatory agencies having jurisdiction and without conditions.
Conditional permits do not satisfy Substantial Completion requirements.
- .2 All building systems in place, complete, functional and accepted by the Architects.
- .3 HVAC system is tested and balanced with a preliminary balance report submitted to, and accepted by, the Architect and the Owner.
- 45 .4 Facilities are able to be secured by the Owner and any Contractor installed building security systems are complete and
functioning.
- .5 Landscape and site work completed.
- 50 .6 Odor and fume generating activities are complete. This includes work such as painting, staining, floor installation, etc. This also
includes odor-generating activity that originates in non-occupied spaces, but could enter and impact occupied areas.
- .7 Final cleaning is complete and all construction air filters have been replaced with clean, permanent air filters.
- 55 .8 All dust generating activity within occupied spaces has been completed. This includes dust-generating activity that originates in
non-occupied spaces, but could enter and impact occupied areas.
- .9 Draft submittal of O & M manuals have been submitted and accepted by the Architect and Owner, and operation and maintenance
60 training necessary for the Owner's personnel to maintain operation and occupancy of the facility has been completed. The draft
manual shall include, but not be limited to, all required catalogue data, manufacturers' operating and maintenance instructions,
manufacturers' specifications, schematics, certificates, warranties, guarantees, catalogues and price lists for any equipment,
materials, supplied or parts used in the inspection, calibration, maintenance or repair or the equipment installed as part of the
Work and other related documents required by this Contract. Contractor remains liable and responsible for any damage to
65 systems or equipment until Owner receives this information and training.
- .10 All conveying systems, mechanical, plumbing, electrical, and life safety or other special systems and equipment are complete,
operational, inspected and have received all required final operating permits, to the extent that the Owner can safely and legally
use and occupy the facility.
- 70 .11 Remaining punch-list items do not represent a hazard or create an adverse impact to the Owner and occupants in order for the
contractor and his subcontractors to complete. Completion of punch-list items should not cause interruption or disruption to the
Owner's functions due to noise, dust, odor, fumes, etc., or they must be undertaken and completed during off-hours convenient to

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the Owner's operations and at no added cost to the Owner.

.12 The Owner is able to fully occupy and utilize all portions of the Work.

5 **9.8.3 2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment (“Punch List”). *By submitting a request for Substantial Completion Inspection, the Contractor thereby certifies that the Work, or the designated portion, is functionally ready for occupancy by the Owner, per the requirements of Paragraph 9.8.2, and that the remaining incomplete or defective Work required by the Contract Documents shall be completed within the time specified in the Contract Documents for Final Completion.* Failure to include an item on such *the* list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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15 **9.8.4 3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's, *or Owner's* inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the requirements of the Contract Documents so that the Owner can fully occupy or utilize the Work or designated portion, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such *the* item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to ~~determine~~ *recommend* Substantial Completion. *The Owner must concur with the Architect's opinion in order for Substantial Completion to be granted.*

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25 **9.8.5 4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall ~~establish~~ *recommend to the Owner* the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, *attach the final punch list*, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. *Satisfactory completion of all incomplete work and items on the final punch list, completion of all Owner training, submittal of complete M&O manuals, submission of complete As-Built drawings and specifications shall be Final Completion of the Work in accordance with Subparagraph 8.3.4 except as further provided by Paragraph 9.10.* Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion *and except as may be specified in the Contract Documents.*

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35 **9.8.6 5** The Certificate of Substantial Completion *and final punch list* shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such *the* Certificate. *The Project shall not be deemed Substantially Complete until the Certificate is issued.* Upon *Final Completion*, such acceptance and consent of surety, ~~if any,~~ the Owner shall make payment of retention or release of securities held in lieu of retention, applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

9.8.7 *When the Contractor considers the Work complete, Contractor shall submit written certification that:*

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- 1. Contract Documents have been reviewed.*
 - 2. Contractor has inspected Work for compliance with Contract Documents.*
 - 3. Work has been completed in accordance with Contract Documents and all punch list items corrected, and the Work is ready for final inspection.*
 - 4. Equipment and systems have been tested in the presence of the Owner's representative and are operational.*
 - 5. All final close out documentation has been submitted and all Owner training is complete.*
 - 6. Work is complete and ready for final inspection.*

9.8.8 *The Architect will inspect Work to verify completion status as soon as possible after receipt of the Contractor's certification.*

9.8.9 *Should the Architect consider the Work incomplete or defective:*

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- 1. The Architect will notify the Contractor in writing within seven (7) days, listing incomplete or defective work.*
 - 2. The Contractor shall immediately remedy deficiencies, and send second request for inspection of the Work by the Architect.*
 - 3. The Architect will re-inspect Work within fourteen days.*

9.8.10 *When the Architect and the Owner find the Work acceptable under the Contract Documents, they will jointly notify the Contractor in writing.*

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70 **9.8.11** *Should it become necessary for the Architect to conduct additional inspections subsequent to Substantial Completion or to Final Completion because of continued delays or failure to complete all punch list items by the Contractor, the Architect will conduct such inspections at his standard hourly rate and will charge the Owner, and such costs will be deducted from moneys still due the Contractor. These costs are in addition to any liquidated damages.*

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Clause 11.4.1.5 *Article 11* and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2.3. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

9.9.4 *In the event of partial or total occupancy before Substantial Completion, the Contractor shall cooperate with the Owner in making available for the Owner's use, with costs to be apportioned between the Owner and the Contractor, such building services as heating, ventilation, cooling, water, security and lighting for the portion or portions to be occupied. If the Work required to furnish such services is not entirely completed at the time the Owner begins to occupy aforesaid portion or portions, the Contractor shall make every reasonable effort to complete such Work or make temporary provisions for such work as soon as possible so that these building services may be put into operation and use. The Contractor shall remain responsible for completion of the Work per the Contract Documents. The Contractor shall remain responsible and liable for operation, warranty and damage to any building systems until such time that they are turned over to the Owner, and required training and complete maintenance and operations documents are received by the Owner.*

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. *The Owner must agree with the Architect's recommendation for Final Completion to be granted and final payment to be made.*

9.10.2 ~~Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.~~

9.10.2 *Neither the final payment nor the remaining retention or substituted securities shall become due until the Contractor submits to the Architect, and the Owner receives:*

- (1) *Affidavit of Payment of Debts and Claims, AIA Document G706 and attachments including Contractors Release or Waiver of Liens, showing that payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied,*
- (2) *Consent of Surety to Final Payment or release of substitute securities, or satisfaction of all such obligations such as receipts, releases and waivers or liens arising out of the Contract, to the extent and in such form as may be designated by the Owner,*
- (3) *All required close-out materials and Record Drawings and Specifications, including fully marked up as-built drawings and electronic files, warranties, operating manuals, and assignments as required, and*
- (4) *All specified training of Owner personnel.*
- (5) *A certificate evidencing that insurance required by the Contract Documents will remain in force through the warranty period and will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the Owner*

If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond or substitute security satisfactory to the Owner to indemnify him against any such claim. If any such claim remains unsatisfied after all payments are made, the

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Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

5 Failure to submit accurate and complete closeout materials and Record Drawings may result in a deduction from the Contract of up to one percent (1%) of the value of affected subcontract. This value shall be determined from the Schedule of Values for the entire trade's portion of the Work, or sub-contract value which the Contractor must release to the Owner, including the general contractor mark-ups, bond, insurance, profit, plus applicable change order amounts added to that Work. This amount shall not be considered a penalty but a reimbursement to the Owner for costs that will be incurred due to damage, additional cost, time or effort required during future construction or maintenance, resulting from a lack of complete or accurate information regarding equipment or assemblies provided or actual installed conditions.

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15 **9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

20 **9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- 25 .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work, or if applicable, the Cost of the Work, to comply with the requirements of the Contract Documents;
- 30 .3 terms of special warranties required by the Contract Documents;
- .4 faulty or defective Work appearing after preparation of the punch list for Substantial Completion; or
- .5 improper charges, overcharges, improper billing, over-payment or other errors or discrepancies identified by an audit following final payment.

35 **9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

40 **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

45 **10.1.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. *No existing main switches, circuit breakers or valves shall be operated by the Contractor. The College will provide personnel to operate, shut down or start up existing systems. When working within or adjacent to existing facilities, or when tying into existing utilities, the Contractor shall use and comply with College red tag permit systems, tag out procedures and hot work permit systems for cutting, welding, soldering, grinding, etc.*

50 **10.2 SAFETY OF PERSONS AND PROPERTY**

55 **10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- 60 .1 employees on the Work and other persons who may be affected thereby *as well as all students, employees or the general public who may be on or near the site of the Work;*
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

65 **10.2.2** The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

70 **10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for This Agreement is based closely upon the American Institute of Architects 1997 Edition of AIA Document A201, "General Conditions of the Contract for Construction". AIA has not granted specific authorization for this use, nor has Maricopa Community Colleges requested such use. MCCCDCD pays an annual license fee for unlimited use of all AIA documents. Our use is intended to be an edited version of the AIA standard documents and not intended to override or avoid copyright or other use of their documents.

execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. *The Contractor shall not store any explosives or hazardous materials at the Work site without full disclosure to the Owner and obtain the Owner's prior written approval. The Contractor shall give the Architect and Owner ten days prior written notice of the times and places of the use of any explosives.*

10.2.5 The Contractor shall promptly remedy damage and loss ~~(other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss solely attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or solely attributable to the acts of anyone for whose acts either of them may be liable, and not attributable in any manner to the fault or negligence of the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under the terms of the Contract. or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.~~ The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18. *The Contractor shall be liable for any and all damage caused by it or by any of its Subcontractors or Sub-subcontractors to the Owner's premises or to the Work. The Contractor shall hold and save the Owner and its agents, free and harmless from liability of any nature or kind arising from any use, trespass, or damage occasioned by the operations of the Contractor, its employees, agents, or any of its Subcontractors, Sub-subcontractors or suppliers.*

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

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.2.8 *The Contractor shall provide and maintain pumping facilities, including power, for keeping the site, excavations and structure free from accumulations of water at all times, whether from underground seepage, flooding or surface run-off, rainfall, drainage or broken lines. The structure shall be enclosed and be protected from water or weather infiltration prior to installing any materials, finishes or equipment that may be damaged by weather or exposure.*

10.2.9 *The Contractor shall be responsible for all existing structures and/or improvements, both above and underground, including the finishes thereof (both exterior and interior) within the areas adjoining the Work, and shall provide adequate protection, either by barricades, covering or by temporary removal and replacement. Any existing structures and/or improvements damaged during construction shall be repaired or replaced with materials, workmanship, fixtures or equipment of the same kind, quality and size as required by the Contract Documents, or as pre-existed any adjacent building or site development so damaged. Any materials or equipment temporarily removed and damaged shall be re-erected or reinstalled in a manner approved by the Architect.*

10.3 HAZARDOUS MATERIALS

10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop work in the area affected and report the condition to the Owner and Architect in writing.

10.3.2 The Owner shall retain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either have reasonable objection to a person or entity proposed by the Owner. If either the Contractor or Architect has an objection to the persons or entities proposed by the Owner, the Owner shall propose another to whom the Contractor and Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article 7. *The rights and liabilities of the parties when a hazardous substance is encountered are specified by A.R.S §32-1129.03.*

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

10.4 The Owner shall not be responsible under Paragraph 10.3 for materials or substances brought to the site by the Contractor, *Subcontractors or material suppliers* unless such materials or substances were required by the Contract Documents.

10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all costs and expense thereby incurred.

10.6 EMERGENCIES

10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

ARTICLE 11

INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.2 OWNER'S LIABILITY INSURANCE

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

11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's, and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased by such coverage shall be equal to the aggregate limits required for Contractor's Liability Insurance under Clauses 11.1.1.2 through 11.1.1.5.

11.3.2 To the extent damages are covered by Project Management Protective Liability Insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Paragraph 11.1.

11.4 — PROPERTY INSURANCE

11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

11.4.1.1 — Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

11.4.1.2 — If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Subsubcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor, in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

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

11.4.1.5 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of Insurance.

11.4.2 Boiler and Machinery Insurance.—The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Subsubcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.4.3 Loss of Use Insurance.—The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

11.4.7 Waivers of Subrogation.—The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall

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provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

5 ~~11.4.8~~ A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.4.10. ~~The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.~~

10 ~~11.4.9~~ If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.5 and 4.6. ~~If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.~~

15 ~~11.4.10~~ The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Paragraph 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. ~~If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.~~

25 ~~11.5~~ PERFORMANCE BOND AND PAYMENT BOND

30 ~~11.5.1~~ The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

35 ~~11.5.2~~ Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

11.1 GENERAL REQUIREMENTS (revised 10/05)

MCCD requires that all insurers:

- 35 1. *Be licensed or approved to do business within the State of Arizona.*
- 40 2. *Write required insurance on a per occurrence basis, except that Professional Liability (required when the Contractor or any subcontractor performs any design work based upon information provided by the Architect) and Pollution Liability are acceptable written on a claims-made basis.*
- 45 3. *Contractor shall name MCCD, its and its agents, representatives, officers, directors, officials, employees, and volunteers as "Additional Insureds" for work that is being performed by the Contractor. Copies of endorsements must be attached on all policies, except the Workers' Compensation and the Professional Liability with regard to liability and defense of suits arising from operations by or on behalf of the Contractor with respect to the work or project at issue. Contractor shall provide a Certificate of Insurance and if requested, copies of all policies and/or endorsements before commencement of work.*
- 50 4. *Possess a minimum A.M. Best's Insurance Guide rating of A- VI.*
- 55 5. *Via Certified Mail, provide a minimum of 30 days advance written notice of cancellation or non-renewal of policies required under the contract to MCCD.*
6. *Provide a completed Certificate of Insurance containing the following information:*
 - *Name and address of agent, phone number and fax number*
 - *Name of insurance company(ies) and policy number(s)*
 - *Policy period*
 - *Name and address of insured*
 - *Description of coverage(s)*
 - *Name/Number of Project*
 - *Policy limits*
 - *Special instructions or terms of coverage (for example: addition of MCCD as additional insured, identification of project or operations with respect to certificate being issued). Provide copies of the specified endorsements with the Certificate of Insurance.*

- MCCD listed as the certificate holder
- Signature of the insurer's agent or representative and date

7. MCCD requires that all policies of insurance be on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by MCCD.

5 8. All liability policies must provide a Separation of Insureds clause, also known as cross liability coverage.

9. MCCD requires that the Contractor provide a renewal certificate at least 15 days prior to expiration.

10. MCCD also requires proof of professional liability (required for Design/Build Agreements only) and pollution liability coverages be provided for up to three (3) years after the completion of a project.

10 11. The Contractor agrees that the insurance requirements specified in the contract do not reduce the liability Contractor has assumed in the indemnification/hold harmless section of the contract.

15 12. MCCD reserves the right to approve the security of the insurance coverages provided by the insurance company (ies) terms, conditions, and the Certificate of Insurance. Failure of the Contractor to fully comply with these requirements during the term of the Contract will be considered a material breach of contract and will be cause for immediate termination of the Contract at the option of MCCD.

20 13. At the execution of this Contract, Contractor shall furnish the MCCCDD Risk Manager with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such Certificates and endorsements shall identify the Contract or Project. Each insurance policy required by this Contract shall be endorsed to state the coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the MCCCDD Risk Manager. Such notice shall be sent directly to:

25 Len Wonsey, Purchasing Department
 Maricopa County Community College District
 2411 W. 14th Street
 Tempe, AZ 85281

30 .14 Any use of a Contractor Controlled Insurance Program (CCIP) shall require specific notice to and written acceptance by the Owner prior to signing the construction Agreement. Any insurance companies within the CCIP must meet or exceed the requirements of this Section 11.1. CCIP insurance shall be provided and charged at rates and costs no higher than would be incurred through a standard insurance policy issued by an independent insurer meeting the other requirements of Article 11.

11.2 INSURANCE AND RELATED REQUIREMENTS

11.2.1 Minimum Insurance Requirements

35 Contractor shall obtain and maintain the minimum insurance coverages set forth below. By requiring such minimum insurance, MCCD shall not be deemed or construed to have assessed the risk that may be applicable to Contractor under this Contract. Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance coverages stated below do not replace any surety (performance, payment, or maintenance) bonds as required by contract.

40 Contractor shall promptly advise MCCD in the event any general aggregates or other aggregate limits are reduced below the required per occurrence limit. At the Contractor's expense, Contractor will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to MCCD a new certificate of insurance showing such coverage is in force.

11.2.2 Required Coverages

.1 Commercial General Liability—ISO CG 00001 or equivalent. Coverage to include:

45 a. Premises and Operations

b. Explosions, Collapse and Underground Hazards

c. Personal/Advertising Injury

d. Products/Completed Operations. Completed Operations coverage shall be carried for eight year, extendable for an additional year, per Arizona Statute, or the applicable statute of repose for the location of the Work.

e. *Liability assumed under an Insured Contract (including defense costs assumed under contract)*

f. *Broad Form Property Damage*

g. *Independent Contractors*

h. *Limited Pollution Liability Extension Endorsement with required modification to f. (1)(a), ISO CG 2415 (1998 Edition)*

5 i. *Pollution Exclusion Limitation Endorsement—Overspray*

j. *Designated Construction Project(s) General Aggregate Limit, ISO CG 2503 (1997 Edition)*

k. *Additional Insured – Owners, Lessees or Contractors Endorsement, ISO Form 2010 (1997 Edition or equivalent)*

l. *Additional Insured – Owners, Lessees or Contractors-Completed Operations Endorsement, ISO Form CG 2037 (10/2001 Edition or equivalent)*

10 .2 *Automobile Liability including all:*

a. *Owned Vehicles*

b. *Non-owned Vehicles*

c. *Hired Vehicles*

d. *Personal Injury Protection (where applicable)*

15 *Endorsements CA9948 and MCS-90 are required if the Contractor is transporting any type of hazardous materials.*

.3 *Workers' Compensation*

a. *Statutory Benefits (Coverage A)*

b. *Employers Liability (Coverage B)*

.4 *Contractors Pollution Liability*

20 *MCCCD requires this coverage whenever work at issue under this contract involves potential pollution risk to the environment or losses caused by pollution conditions (including asbestos) that may arise from the operations of the Contractor described in the Contractor's scope of services. Policy shall cover the Contractors completed operations. Such coverage shall include:*

a. *Bodily Injury, sickness, disease, mental anguish or shock sustained by any person, including death.*

25 b. *Property Damage including natural resource damages, physical injury to or destruction of tangible property including resulting loss of use, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed.*

c. *Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.*

30 d. *Cleanup costs, removal, storage, disposal, and or use of the pollutant; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.*

35 *Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three years beginning from the time that work under this contract is completed.*

Provide Limited Pollution Liability Extension, modifying the Pollution Exclusion Wording as Required. Exclusion f. (1)(a) of Coverage A (Section I) is replaced with the following:

“At or from any premises, site or location that is or was at any time owned or occupied by, or rented or loaned to, the insured;”

11.2.3 LIMITS OF LIABILITY

The Contractor shall carry the following limits of liability:

Commercial General Liability	
General Aggregate ¹	\$ 5,000,000
Products/Completed Operations Aggregate	\$ 5,000,000
Each Occurrence Limit	\$ 5,000,000
Personal/Advertising Injury	\$ 5,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Payments (Any One Person)	\$ 5,000
Automobile Liability	
Bodily Injury/Property Damage (Each Accident)	\$ 1,000,000
Workers' Compensation	
Coverage A (Workers' Compensation)	Statutory
Coverage B (Employers Liability)	\$ 500,000/accident \$ 500,000/disease \$ 500,000/all disease
Contractors Pollution Liability	
Per Loss	\$ 5,000,000
Aggregate	\$ 5,000,000
MCCD requires Contractor to keep this policy in effect for three (3) years after completion of the project.	

5

¹ Designated Construction Project(s) General Aggregate (ISO Form CG2503, 1997 edition or equivalent.)

The required insurance coverages shall be maintained throughout the term of this contract and, except for Automobile Liability and Workers' Compensation, for a period of two (2) years after the date of substantial completion of the project, and three (3) years after the date of Substantial Completion of the Project for Professional Liability (required for Design/Build Agreements only) and Pollution Liability.

10

11.3 BUILDER'S RISK INSURANCE **(NOT REQUIRED IF PROJECT IS 100% SITEWORK and NO WORK OCCURS WITHIN ANY BUILDING)**

15

11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Arizona, Builder's Risk Insurance in the amount of the initial Contract Amount as well as subsequent modifications for the entire project at the site on a replacement cost basis without voluntary deductibles. Such Builder's Risk Insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than MCCD has insurable interest in the property to be covered, whichever is earlier. The Builder's Risk insurance shall include interests of MCCD, the General Contractor, subcontractors and sub-tier contractors in the project.

20

11.3.2 Builders' Risk Coverage shall be on a Special Covered Cause of Loss Form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition, increased cost of construction, design consultant's fees and expenses, flood and earthquake, and all below and above ground structures, water and sewer mains, and other utilities. Coverages shall be written for 100% of the completed value (replacement cost basis) of the work being performed. MCCD agrees to provide the necessary exposure base information for quotation by the Builder's Risk carrier. MCCD agrees to pay the premium associated with the Soft Costs coverage as a change order, if MCCD decides to purchase this coverage.

25

11.3.3 The Builder's Risk shall also include the follow amendments/provisions:

30

a. **Partial Occupancy Clause.** The policy shall specifically permit partial occupancy at or before Substantial Completion or final acceptance of the entire Work. Partial occupancy or use of the Work shall not commence until the insurance company or companies providing insurance have consented to such partial occupancy or use. MCCD and Contractor shall take reasonable steps to obtain consent of the insurance company or companies, and agree to take no action, other than upon mutual written consent, with respect to occupancy or use of the work that could lead to cancellation, lapse or reduction of insurance.

35

- b. **Deletion of Coinsurance Provisions**
- c. **Replacement Costs Basis -** including modification of the valuation clause to cover all costs needed to repair the structure or work (including overhead and profits) and will pay based on the values figured at the time of rebuilding or repairing, not at the time of loss
- d. **Deletion of any exclusions pertaining to Law, Ordinance or Regulation.**
- e. **Deletion of exclusions for design errors & omissions (for design-build contracts only)**

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- f. *Modification of the electrical apparatus breakdown exclusions and the mechanical breakdown exclusion so that it does not apply to subsequent loss or damage*
- g. *Modify exclusion pertaining to damage to interior of building caused by any covered perils.*
- h. *Resultant Damage Extension including amendment of exclusion pertaining to design error, (for design-build contracts only)*
- 5 i. *Settling, cracking, shrinking or expansion (including coverage for loss resulting from settling, cracking, shrinking or expansion) of foundation walls, floors, or other parts of the structure,*
- j. *Other coverages may be required if provided in Contract Documents.*

11.3.4 *The deductible shall not exceed \$50,000 and shall be the responsibility of the Contractor.*

10 11.3.5 *The Policy shall be amended to show thirty (30) days notice of cancellation. Such notice shall be given to the MCCD and Contractor.*

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

15 11.3.7 *The Contractor shall file with MCCD a copy of the policy that includes the insurance coverages required in this section. The policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to the Project.*

20 11.3.8 *The Contractor shall purchase and maintain Equipment Breakdown Coverage (a.k.a. Boiler & Machinery) required by the Contract Documents or by law, which shall specifically cover insured equipment during installation and testing (including hot testing) and until final acceptance by the MCCD; this insurance shall include interests of MCCD, Contractor, subcontractors and sub-tier contractors in the work; all shall be named as additional insureds.*

25 11.3.9 *All deductibles will be assumed by the Contractor. If MCCD is damaged by the failure or neglect of the Contractor to purchase or maintain insurance as described above, then the Contractor shall bear all reasonable costs properly attributable thereto.*

11.3.10 *Contractors engaged in modifications of existing structures are required to secure a Partial Occupancy Endorsement as described in 11.3.3(a) that enables MCCD to occupy the facility during construction.*

30 11.4 **INSTALLATION FLOATER INSURANCE COVERAGE**

35 *If the Contractor is installing only materials and/or equipment in existing structures or installing infrastructure (i.e., roads, bridges, culverts, underground tunnels, machinery, equipment, etc.) separate from a building, then Contractor must provide Installation Floater Insurance Coverage. Coverage is to be written on a Special Covered Cause of Loss Form and is to include theft, faulty workmanship, mechanical or electrical damage during testing and labor costs to repair damaged work, soft costs (expediting expenses); deletion of any coinsurance provision is also required; any exclusions for underground exposures to be deleted. Flood and Earthquake coverages are also to be provided. Contractor is responsible for this coverage. Coverage shall end when the work is granted Substantial Completion. .*

40 11.5 **CONTRACT OBLIGATIONS**

The insurance, as provided by the Owner for Contractors and Subcontractors under this Article 11 is not intended to, and shall not be construed to limit, qualify, or waive any liabilities or obligations of Contractor or Subcontractors, assumed or otherwise, under this Contract.

45 11.6 **RIGHTS OF INSURED AGAINST OTHER INSURED**

Inclusion of more than one insured, under such insurance, shall not operate to impair the rights of one insured against another insured, and except for the limits of liability, the coverages afforded by such insurance shall apply as though a separate policy had been issued to each insured.

50 11.7 **PERFORMANCE OF CONTRACT TO EXCLUDE INSURANCE COST**

Compensation payable to Contractor for the performance of the Work shall include all costs of insurance as it relates to the coverage required of the Contractor described and provided in this Article 11. Costs for overlapping insurance coverage maintained by Contractor shall not be reimbursable.

55 11.8 **EFFECT OF SUBMISSION OF CERTIFICATES**

60 *The Owner shall review any Certificates of Insurance provided by the Contractor or to check or verify the Contractor's compliance with any and all requirements regarding insurance imposed by the Contract Documents. The Contractor is fully liable for the amounts and types of insurance required herein and is not excused should any policy or certificate of insurance provided by the Contractor not comply with any and all requirements regarding insurance imposed by the Contract Documents.*

65 11.9 **FAILURE OF COMPLIANCE**

Should the Contractor fail to provide and maintain in force any and all insurance, or insurance coverage required by the Contract Documents or by law, or should a dispute arise between the Owner and any insurance company of Contractor over policy coverage or limits of liability as required herein, the Owner shall be entitled to recover from the Contractor all amounts payable, as a matter of law, to the Owner or any other parties, had the required insurance or insurance coverage been in force. Said recovery shall include, but is not limited to

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interest for the loss of use of such amounts of money, plus all attorney's fees costs and expenses incurred in securing such determination and any other consequential damages arising out of the failure of the Contractor or insurance company to comply with the provisions of the Contract Documents, or any policy required hereby, or any other requirements regarding insurance imposed by law. Nothing herein shall limit any damages for which Contractor is responsible as a matter of law.

11.10 SAFETY PROGRAM

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

1. All employees on the Work site and all other persons who may be affected thereby.
2. All the Work, materials, and equipment to be incorporated therein, whether in storage on or off the site.
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

11.10.2 Contractor shall comply will all applicable laws, ordinances, rules, and regulations of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. Contractor shall erect and maintain, as required by existing conditions and progress on the Work, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent utilities.

11.10.3 Safety Warranty: Contractor warrants that Contractor is aware of, and understands the hazards which are presented to, persons, property, and the environment relating to, and arising out of, the Contractor's work or service, as described in this Contract's scope of work or service. In the event the Contractor of Contractor's Subcontractor is working or operating in an unsafe manner, the Contractor will immediately take full and appropriate steps to assure the safety of those working in the construction area or Work site.

11.11 PERFORMANCE BOND AND PAYMENT BOND

11.11.1 At the execution of this Contract, the Contractor shall file with MCCCC, a performance bond and a payment bond on MCCCC approved forms in the full amount of the Contract pursuant to A.R.S. § 41-2574. The cost of the bonds shall be included in the Contract Sum, and the bonds shall be payable to MCCCC. The Contractor shall require the attorney-in-fact that executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power of Attorney. The bonds required by this section shall be provided solely by one or more surety companies holding a Certificate of Authority to transact surety business in this State issued by the Director of the Department of Insurance pursuant to A.R.S. § 20, Chapter 2, Article 1. Individual surety or sureties shall not execute the surety bond or bonds, even if the requirements of A.R.S. § 7-101 are satisfied. Bonds shall be made payable to Maricopa County Community College District.

11.11.2 Upon request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit copies to be made.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

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

12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 BEFORE OR AFTER SUBSTANTIAL OR FINAL COMPLETION

12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial or Final Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition to the Contractor's obligations under Paragraph 3.5, if, within ~~one year~~ two-years after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to

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be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. *During this warranty period, if any faulty or defective materials or workmanship is discovered, the Owner will provide notice to the Contractor requesting the Contractor repair or remedy the defect at the sole expense of the Contractor.* During the ~~one-year~~ *two-year* period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner *does not* ~~waives~~ the right to require correction by the Contractor or to make a claim for breach of warranty.

.1 The Contractor agrees that he shall respond to the warranty request within forty-eight (48) hours, and then commence and diligently pursue remedy or repair within five work days. Warranty requests that adversely effect the operation of critical building systems or life safety issues shall be responded to immediately and corrected as quickly as possible. Neither final payment nor any other provision in this Contract shall relieve the Contractor of the sole responsibility to such corrective work.

.2 If the Contractor fails to timely commence the corrective work, the Owner, at his option, may perform the corrective work or have the same performed at the expense of the Contractor, with payment due to the Owner by the Contractor, or his surety, upon receipt for the expenses.

12.2.2.2 ~~The one-year two-year~~ period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, *or for a period of six months after completion of the corrective work, whichever is longer. During this warranty period, if any faulty or defective materials or workmanship is discovered, the Owner will provide notice to the Contractor requesting the Contractor repair or remedy the defect at the sole expense of the Contractor.*

12.2.2.3 ~~The one-year~~ period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Paragraph ~~12.2~~ *Corrective Work shall be warranted to be free of defects for a period equal to the longer of six months after completion of the corrective Work or for the remainder of the warranty period otherwise applicable.*

12.2.3 The Contractor shall remove from the site portions of the Work which are *defective or otherwise* not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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

12.2.5 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the ~~one-year~~ *two-year* period for correction of Work as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work. *Only work supplied, installed and accepted at final completion shall be limited by the two-year warranty correction period. Work that was omitted or not installed per the Contract Documents shall be provided, repaired or replaced to meet Contract Document requirements within State contract law statute of limitations.*

12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the *State of Arizona*. ~~place where the Project is located.~~

13.1.2 *It shall be mandatory on the Contractor to whom the contract is awarded, and upon any subcontractor under him, to comply in every respect with the provisions of Titles 23, 32, and 34, Arizona Revised Statutes and with all other requirements of the State of Arizona, applicable to contract for the construction of Public Works, and with all applicable City, County, State and Federal laws and ordinances, including the Occupational Safety and Health Act (OSHA).*

13.2 SUCCESSORS AND ASSIGNS

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

13.2.2 ~~The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents.~~

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The Contractor shall execute all consents reasonably required to facilitate such assignment.

13.3 WRITTEN NOTICE

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

13.4 RIGHTS AND REMEDIES

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

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

13.4.3 REQUIRED NOTICES BY THE OWNER

13.4.3 Failure of the Owner to act or provide written notice to the Contractor regarding the Contractor's failure to comply with any specific requirement of the Contract or Contract Documents shall not constitute Owner's waiver of the requirement. The Owner's waiver of any requirement will occur only in writing which expressly states that it is a waiver of the specific requirement described in that writing.

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals, *except as provided for in the testing allowance or as directly paid for by the Owner*. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded. *Inspections and Tests required to establish compliance with the Contract Documents, except as otherwise provided in the Contract Documents, will be made by a pre-qualified, independent testing agency selected and paid for by the Owner. When the initial tests indicate variance to the Contract Documents, subsequent re-testing of the same work to establish compliance shall be performed by the same agency and the cost thereof borne by the Contractor. Representatives of the testing agency shall have access to the Work at all times. The Contractor shall provide facilities for such access in order that the agency may properly perform its functions.*

.1 Inspections or Tests required by codes or ordinances, or by a plan approval authority, and made by a legally constituted authority shall be the responsibility of, and paid for by, the Contractor, unless otherwise provided by the Contract Documents.

.2 Inspection or Testing performed exclusively for the Contractor's convenience shall be the sole responsibility and cost of the Contractor.

13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Subparagraph 13.5.3, shall be at the Owner's expense.

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

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

The independent agency, employed by the Owner, will prepare the test reports, logs, and certificates applicable to the specific inspections and tests and promptly deliver the specified number of copies of same to the designated parties. Other required certificates of inspection, testing or approval shall be secured by the Contractor and delivered by him to the Architect, in such time as to not delay progress of the Work or final payment therefor.

13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing. *Adequate notice of the time and place of tests, inspections and approvals shall be provided to the Architect.*

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

13.5.7 *Required materials and equipment shall be inspected and tested under field operating conditions. The Owner and/or Architect reserve the right to be present at this testing and operation. Contractor shall give the Architect and Owner at least three work days advance notice by phone*

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prior to scheduling these tests or operation. Neither the observations of the Architect, not inspectors, tests or approvals by persons other than the Contractor shall relieve him from obligations to perform the Work in accordance with the Contract Documents.

13.5.8 If the Contractor is required to perform tests that due to climatic or other conditions must be delayed, the tests will be accomplished by the Contractor at the earliest possible date and that the Contractor's guarantee of that item and other items dependent on its proper operation shall begin upon satisfactory completion of the test. The responsibility of the Contractor under this Subparagraph is not abrogated upon the Owner's election to initiate final payment. Retention may be held until all necessary tests are provided and passed.

13.6 INTEREST

13.6.4 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due *per Arizona State Statute requirements*. at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

- .1 **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 **Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- .3 **After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

13.8 ASSIGNMENTS

13.8.1 The Owner and Contractor recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact borne by the ultimate purchaser. Therefore, the Contractor hereby assigns to the Owner any and all claims for such overcharges. The Contractor shall include this Subparagraph in all subcontracts, except subcontracts for standard commercial supplies or raw materials and shall require all Subcontractors at all tiers to likewise assign all claims for overcharges to the Owner.

13.8.2 The Contractor shall not assign any of the funds to be received or Work to be provided under this Contract unless the Contractor has given prior written notice to the Owner and the Owner has no reasonable objection to this assignment.

13.9 EQUAL OPPORTUNITY

13.9.1 The Contractor shall maintain policies of equal employment opportunity and non-discrimination in compliance with all applicable Federal, State and local laws, rules and ordinances, including but not limited to A.R.S. Title 41, Chapter 4, Executive Order 2009-09, and as follows:

13.9.1.1 The Contractor and all Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, disabled or Vietnam era veteran status. The contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, national origin, disability, disabled or Vietnam era veteran status. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

13.9.1.2 The Contractor and all Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, disability, disabled or Vietnam era veteran status.

13.10 INSPECTION AND AUDIT

13.10.1 Under the provisions of Arizona Revised Statutes Sections §35-214 and §41-2548, the Contractor's records related to this Contract shall be subject to audit. Such records shall include, but not be limited to, any and all contracts and subcontract agreements, purchase orders, financial accounting records, checking accounts, written policies and procedures, subcontractor files, original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, general ledger entries related to this Work, insurance rebates and dividends, and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with the Contractor's Work.

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All of the foregoing is referred to as "Records" and shall be open for inspection and subject to audit and/or reproduction by the Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of:

- (a) Contractor compliance with Contract requirements
- (b) Compliance with District and State business ethics Statutes and regulations
- (c) Compliance with provisions for pricing change orders, invoices or claims submitted by the Contractor or any of his payees.

13.10.2 Other specific records subject to audit, by the Owner or his designee, will include any and all other sources of information that may, in the Auditor's judgment, have any bearing on or pertain to matters, rights, duties or obligations covered by the Contract Documents, State Statute or Regulations. Computerized data shall be provided in a format requested by the Owner. When requested by the Owner or his designee, direct access to hard drives, business information software employed by the Contractor and subcontractors.

13.10.3 During construction of the Work, and for five years after Final Completion, or longer if required by law, the Contractor, as required by A.R.S. § 35-2145, shall retain, and shall require all Subcontractors to retain, for inspection and audit, all books, accounts, reports, files and time cards, materials invoices, payrolls, and evidence of all other direct and indirect costs related to the bidding and performance of this Work. Upon request by the Owner, a legible copy or original or any or all such records shall be produced by the Contractor or his subcontractors or suppliers at the office of the Owner.

13.10.4 The Contractor shall require all payees receiving funds from this Work to comply with the provision of this Article by insertion of the requirements herein in their written agreements or purchase orders. Contractor shall fully cooperate and will cause all payees to cooperate fully in furnishing or making available to the Owner whenever requested in an expeditious manner any and all information, materials or data required by this Article.

13.10.5 The Owner's agent or its authorized representative shall have access to the Contractor's facilities and shall be allowed to interview current and former employees to discuss matters pertinent to the performance of this Contract, and shall have access to all necessary records, and shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article.

13.10.6 If an audit inspection or examination in accordance with this Article discloses overpricing or overcharges of any nature by the Contractor to the Owner, the adjustment or repayment shall be made within a reasonable amount of time, not to exceed 90 days, from presentation of Owner's findings to the Contractor. If the audit or examination finds overcharges or overpricing in excess of one-half of one percent (0.5%) of the total contract billings, the reasonable and actual cost of the audit shall be reimbursed to the Owner by the Contractor.

13.11 Legal Worker Requirements: As mandated by Arizona Revised Statutes § 41-4401, MCCCD is prohibited from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes §23-214-A, which requires that employers verify the employment eligibility of their employees through the Federal E-verify system. An "employer" is an independent contractor, a self-employed person, the State of Arizona or any of its political subdivisions, or any individual or type of organization that transacts business in the State of Arizona, that has a license issued by an agency in the State and that employs one or more employees in the State. (See A.R.S. §23-211-4.) Therefore, in signing or performing any contract for MCCCD, the Contractor fully understands that:

- a. It warrants that both it and any subcontractors it may use comply with all federal immigration laws and regulations that relate to their employees and with A.R.S. § 23-214-A;
- b. Any breach of that warranty is material and is subject to penalties up to and including immediate termination of the contract; and
- c. MCCCD or its designee is authorized by law to randomly inspect the records relating to an employee of the Contractor or any of its subcontractors who works on the contract to ensure compliance with the warranty made in Paragraph A above.

13.11 RECORD DRAWINGS

13.11.1 The Record Drawings and Specifications shall consist of a set of electronic files and set of subsequent reproducible drawings that update the original Drawings, and marked up specifications that indicate all field changes that were made to adapt to field conditions, changes resulting from Supplemental Instructions or Contract Change Orders, and all concealed and buried installation of piping, conduits and utilities services installed or changed as part of this Work. All buried and concealed items both inside and outside the facility shall be accurately located on the Record Drawings as to the depth and in relationship to not less than two permanent features, such as interior or exterior wall faces or corners. Buried utilities or existing utilities that were altered or removed as part of the Work shall be located and plotted on an electronic file by a professional utility location firm or civil engineer. The Record Drawings shall be clean and all changes, corrections and dimensions shall be made in a neat and legible manner in contrasting color or bubble indicating the changes. All markings made shall be in a manner that allows the reproduction to be clearly and easily read. All RFI's, ASI's, Change Orders, etc. that are referenced in the Record Drawings shall be attached or included in the Drawings; cross referencing alone to an unattached document is not acceptable. Completion and acceptance of Record Drawings and Specifications are a condition precedent to final payment. Failure to provide complete and accurate Record Drawings may result in a deduction to the Contract as described in Paragraph 9.10.2.

13.12 Tobacco free facilities. The Maricopa County Community College District is dedicated to providing a healthy, comfortable, and educationally productive environment for students, employees, and visitors. In order to promote a healthy learning and work environment, the Maricopa County Community College District will become a total smoke free and tobacco free environment, effective July 1, 2012. Smoking (including the use of "e-cigs") or using tobacco products anywhere within the District's property is strictly prohibited. This includes all indoor areas and outdoor areas, such as parking lots (including inside vehicles in the parking lots), sports fields and sidewalks, and includes construction sites under the Contractor's control. Contractor shall be responsible for advising its officers, employees, subcontractors, suppliers and any other parties (Project Personnel) who come onto District property that they may not smoke or use tobacco products anywhere on Owner's property. Contractor's failure to advise Project Personnel of the prohibition or failure to address violations of the prohibition will result in corrective action, which may include directing the removal of Project Personnel from the project. A consistent violation of the prohibition may result in a suspension of Contractor from competing for other District projects.

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13.13 **NO CONSTRUCTION AGAINST DRAFTING PARTY**

5 *Each party acknowledges that it has had an opportunity to review this Agreement with counsel, and such documents shall not be construed against any party that is determined to have been the drafter of the documents.*

ARTICLE 14

10 **TERMINATION OR SUSPENSION OF THE CONTRACT**

14.1 TERMINATION BY THE CONTRACTOR

15 **14.1.1** *Except under the conditions of Paragraph 14.3.3, the Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:*

- 20 .1 issuance of an order of a court or other public authority having jurisdiction, which requires all Work to be stopped;
- .2 ~~an act of government, such as a declaration of national emergency, which requires all Work to be stopped;~~
- 25 .3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;
- .4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.1; *or*
- 30 .5 *the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to the progress of the Work, and the Contractor has given seven days' written notice to the Owner and the architect of the details of such failure.*

35 **14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion ~~the Project~~ or 120 days in any 365-day period, whichever is less.

40 **14.1.3** If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, ~~including reasonable overhead, profit and damages and for the work stored or completed to date of the Notice, including mark-up and profit as described in Paragraph 7.5.~~

45 **14.1.4** *Except under the conditions of Paragraph 14.3.4, if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.*

50 **14.2 TERMINATION BY THE OWNER FOR CAUSE**

~~14.2.1~~ The Owner may terminate the Contract if the Contractor:

- 55 ~~1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;~~
- ~~2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;~~
- 60 ~~3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or~~
- ~~4 otherwise is guilty of substantial breach of a provision of the Contract Documents.~~

65 **14.2.2** ~~When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:~~

- 70 ~~.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;~~
- ~~.2 accept assignment of subcontracts pursuant to Paragraph 5.4; and~~

~~.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

5 ~~14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.~~

10 ~~14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.~~

15 *14.2.1 The Owner may terminate or default the Contractor upon actual or anticipated, persistent or repeated occurrence of, or failure to, correct any one or more of the following:*

- 1 *1. If the Contractor fails to supply, or fails to cause to supply, sufficient skilled workman or suitable materials or equipment required for the timely and proper progress and/or completion of the Work;*
- 20 *2. If the Contractor, upon payment by the Owner, fails to make prompt payment to Subcontractors or suppliers at any tier, for materials, labor or equipment due, or approved in the Application for Payment, in accordance with the respective agreements between the Contractor and the Subcontractors;*
- 25 *3. If the Contractor fails to comply with laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction or specified by this Contract;*
- 30 *4. If the Contractor refuses or fails to prosecute the work, or any separable part, with such diligence as will ensure its completion within the agreed upon time; or if the Contractor fails to produce and pursue the required recovery schedules; or if the Contractor fails to complete the Work within contract dates of Substantial or Final Completion;*
- 5. If the Contractor fails to follow any reasonable instruction by the Architect or Owner;*
- 6. If the Contractor performs Work that deviates from the Contract Documents, or fails to remove, replace or repair improper or inadequate Work when directed by the Architect;*
- 35 *7. If the Contractor fails to obtain or maintain required bonds, insurance, licenses or permits;*
- 8. If the Contractor has repeated or excessive safety violations, whether officially reported or not, or fails to remedy serious safety violations;*
- 40 *9. If the Contractor otherwise breaches or violates in any material way any provision or requirements of these Contract Documents or of any other contract between the Owner and Contractor.*

45 *14.2.2 Once the Owner determines that sufficient cause exists, the Owner may terminate or default the Contract without prejudice to any other right or remedy the Owner may have in the Contract Documents or in law. Once the Owner determines that sufficient cause exists, the Owner may terminate or default the Contract after giving the Contractor and its surety notice by issuing a written Declaration of Default. If Contractor fails to cure, or demonstrate reasonable effort to cure, such problem within three Days, and completely cure such problem within seven Days, then Owner may give a second written notice to Contractor and surety of its intent to terminate the Agreement within seven Days. If Contractor, within such second seven Day period, fails to cure such problem, then Owner may declare the Agreement immediately terminated for default by providing written notice to Contractor and surety of such declaration. After expiration of this seven day period, the Owner shall have the sole discretion to permit the Contractor to remedy the cause for the contemplated termination without waiving the Owner's right to terminate the Contract.*

55 *14.2.3 In the event that the Contract is terminated or defaulted, the Owner may take over the Work and prosecute to completion, by contract or otherwise, and may exclude the Contractor from the site. The Owner may take possession of the Work and all tools, construction equipment, machinery and plant which may be on site of the Work, and the use of same to the full extent that they can be used by the Contractor, and without liability to the Contractor except to return them undamaged, reasonable wear and tear excepted, at such time as any such item no longer has utility for completion of the Work. The Owner may also take possession of all material and appliances stored at the site and finish the Work as the Owner deems expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is completed.*

60 *14.2.4 Immediately upon Termination for Cause or Default, title to all completed work, work in progress and stored materials passes to the Owner. If the unpaid balance of the Contract Sum exceeds the Owner's direct and indirect cost and expenses of completing the Work, including compensation for the additional professional, consultant, internal or additional procurement costs, lost revenue, interest, legal or other required services and damages incurred by the Owner and not expressly waived, such excess shall be used to pay the Contractor for the Work it performed. If such costs exceed the unpaid balance, the Contractor or its surety shall pay the difference to the Owner, or at the sole discretion of the Owner, the difference due may be deducted from balances due on other contracts between the Owner and Contractor. In exercising the Owner's right to prosecute the completion of the Work, the Owner shall have the right to exercise its sole discretion as to the manner and methods of completing the Work. In the event that the Owner accepts bids for corrective Work or completion of the Project, or the Surety assumes responsibility for corrections or completion of the Work, the Contractor shall not be eligible for the award of such contracts or work at the Owner's sole option.*

70 *14.2.5 The Owner shall have the option of requiring any, all or none of the Subcontractors or suppliers to perform according to their subcontracts and purchase orders, and may assign any or all of the subcontracts to a general contractor selected to complete the Work.*

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14.2.6 If the Owner takes over the Work, unexecuted orders entered into by the Contractor for performance of any part of the Work will be effective upon acceptance by the Owner in writing, and only as to those subcontracts and purchase orders which the Owner designates in writing. The Owner may accept assignment at any time during the course of construction prior to Final Completion. All subcontracts and purchase orders shall provide that they are freely assignable by the Contractor to the Owner and its assigns. The assignment is part of the consideration to the Owner for entering into this Contract and may not be withdrawn prior to Final Completion of the Work.

14.2.7 In the event the Contract is terminated and it is determined for any reason that the Contractor was not in default, the termination shall be deemed a suspension for Convenience of the Owner and the rights and obligations of the parties shall be determined in accordance with Paragraph 14.3.

14.2.8 This Contract may be terminated by the Owner under the conditions stated in A.R.S. § 38-511.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption. Adjustment of the Contract Sum shall include *pro-rated profit for the Work completed at the time of the Suspension*. No adjustment shall be made to the extent:

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

14.3.3 If funds approved by the Legislature, by public vote, or by the District Governing Board to perform this Work become unavailable for payment under this Contract, the Owner may delay the Work for a period up to six months, after which date if no approved or apportioned funds are made available, this Contract shall terminate at the option of the Owner. In the event of such delay or termination, the Owner shall pay the Contractor under the Contract through the date of Work stoppage, but only direct job site costs may be recovered by the Contractor for damages reasonably incurred after the date of Work stoppage.

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.1 Upon seven days' written notice, the Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause. Such Termination shall be effective at the time and manner specified in the Notice. In such case, the Contractor shall be paid in accordance with Subparagraph 14.4.3. Such termination shall be without prejudice or limit to any other rights, remedies or claims which the Owner may have against the Contractor.

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

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

14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, which shall be the unpaid progress payments from the Schedule of Values for completed work or work in progress plus the proportional overhead and profit from the Schedule of Values due on that Work only, materials and equipment stored on the site but not yet installed in the Work, plus the retention held to date, and along with reasonable, direct job site costs incurred by reason of such termination, substantiated in accordance with Paragraph 7.2.5 along with reasonable overhead and profit on the Work not executed.

14.4.4 Unless shown as a defined payment line on the Schedule of Values, non-recurring costs, such as project mobilization, or other indirect project start-up costs will not be paid or reimbursed. No payment will be made for items such as home office overhead and profit, anticipated profit, or profit on work not yet performed.

14.5 TERMINATION INFORMATION REQUIRED FROM THE CONTRACTOR

14.5 In the event of termination, for any reason, or default by the Contractor, the following shall be supplied to the Owner and bond company, or their representative, as requested, within seven calendar days of the request:

- .1 subcontract information, including copies of all subcontracts, and both successful and unsuccessful subcontract proposals, including all accounting information related to the subcontracts
- .2 purchase order information, including full copies of all purchase orders with all attachments, and all related correspondence, take-off sheets, change notice proposals, accounting and payment information, etc.
- .3 complete payroll information, including computations of labor burden chargeable to the project, for all personnel employed directly by the Contractor

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- 5
- .4 complete information on all Contractor owned equipment or equipment rentals associated with this Work
 - .5 other job cost or progress support information related to general conditions costs, insurance or bond coverage, daily job superintendent reports, etc.
 6. summaries of costs billed during the period and final/to-date detailed job cost history.
 7. all drawings, manuals, submittals, narratives, tests, etc., associated with the Work.

10 **14.6. DEFAULT OR TERMINATION OF OTHER ON-GOING PROJECTS**

15 *In the event of termination or default of the Contractor, the Owner may terminate or default other on-going Contracts held with the same Contractor. Where termination or default occurs, the Contractor shall take action as described in Subparagraphs 14.7, and be entitled to payment for termination as described in Subparagraph 14.4.3, above, for other On-Going projects in good standing, only when the termination is for Owner's convenience.*

20 **14.7 PROTECTION AND SECURITY FOR WORK IN THE EVENT OF SUSPENSION, TERMINATION OR DEFAULT**

20 *Upon receipt of written notice from the Owner of suspension, termination or default, whether for the Owner's convenience or for cause, the Contractor shall:*

- .1 cease operations as directed by the Owner in the notice;
- 25 .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the completed Work and Work in progress, and property related to the Agreement that is in the possession of the Contractor and which the Owner has or may acquire an interest including stored materials;
- 30 .3 shall maintain site security until directed by the Owner or other arrangements are made by the Owner or Surety and the Contractor is notified in writing to discontinue such services;
- .4 except for Work directed to be performed prior to the effective date of termination stated in the notice, and upon direction from the Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- 35 .5 The Contractor will be reimbursed for the reasonable and direct costs to maintain on-going security and protection as required above upon presentation and approval of supporting documentation. Estimated costs for these requirements shall be reviewed and approved in writing by the Owner in advance.

40 **14.8. All requirements of Article 14 shall be included as flow-down requirements in all sub-contracts and supplier purchase orders.**