

**32750**

**ORIGINAL**

**GENERAL CONSTRUCTION SERVICES AGREEMENT**

**STANDARD TERMS AND CONDITIONS**



**BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT NO. 508**

**AND**

**CONSTRUX, LLC**

**PAULA WOLFF**  
**CHAIR**

**CHERYL L. HYMAN**  
**CHANCELLOR**

**GENERAL CONSTRUCTION SERVICES AGREEMENT**

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**GENERAL CONTRACTING SERVICES AGREEMENT**

This General Contracting Services Agreement (the "Agreement") is effective as of the last date written below (the "**Effective Date**"), and is entered into by and between the Board of Trustees of Community College District No. 508 d/b/a City Colleges of Chicago, a body politic and corporate, having its principal offices at 226 West Jackson Blvd, Chicago, IL 60606 (the "**Board**") and **Construx, LLC** having its principal office **2300 W. Diversey, Chicago, IL 60647** (the "**General Contractor**").

**RECITALS:**

- A. The Board is seeking the removal and replacement of the existing custom acoustic ceiling tiles at its Olive-Harvey College located at 10001 S. Woodlawn Ave., Chicago, IL 60628;
- B. Specifications were prepared by the Board and advertised in sealed bid #**JM1503** on **April 29, 2015**;
- C. General Contractor responded to the bid and was deemed qualified by the Board based upon General Contractor's response and submittals and all of the obligations of the General Contractor which are identified in the General Contractors bid;
- D. The Board desires to engage General Contractor under the terms and conditions of this Agreement pursuant to General Contractor's response; and
- E. General Contractor represents that it has the requisite knowledge, experience and skill necessary to perform the services hereunder and desires to perform such services.

**NOW THEREFORE**, in consideration of the foregoing, and the mutual promises and covenants set forth herein, the parties agree as follows:

**1. EXTENT OF AGREEMENT**

- A. Incorporation of Recitals. The Recitals set forth above are incorporated into this Agreement.
- B. Entire Agreement. This Agreement, including all amendments to it, and all exhibits attached to it, and all documents referenced herein and incorporated herein, constitutes the entire agreement of the parties with respect to the matters contained herein. This Agreement is intended to govern the relations between the Board and General Contractor in connection with any and all Projects awarded to General Contractor pursuant to a bid solicitation. Any prior agreements, understandings, or representations, either written or oral relating to the subject matter of this Agreement not expressly set forth in this Agreement are of no force or effect.
- C. Essence of the Agreement. With respect to General Contractor's performance of its obligations under this Agreement, **TIME IS OF THE ESSENCE.**

## 2. DEFINITIONS

As used in this Agreement, these terms have these meanings (all defined terms used herein that are defined in the Bid Documents or the Contract Documents shall have the same meaning herein, unless the context clearly requires a different meaning or connotation):

- A. **"Architect"** means the licensed person or firm employed by the Board for the purpose of designing and observing the Work for a Project and includes architects of record and engineers.
- B. **"Attorney"** means the General Counsel of the Board.
- C. **"Base Contract Price"** means the amount of compensation, based upon General Contractor's Bid Price (as adjusted pursuant to 720 ILCS 5/33 E-12, if applicable) for a Project to be paid for the Work to be performed by General Contractor as adjusted in accordance with authorized Change Orders from time to time.
- D. **"Bid Documents"** means the Board's solicitation for bids issued in connection with a Project, including, but not limited to, the Drawings and Specifications for the Work and any addenda.
- E. **"Bid Price"** means the price General Contractor has bid to perform the Work for a Project, as accepted by the Board, subject to the provisions of 720 ILCS 5/33 E-12.
- F. **"Change Order"** means a written order issued by the Board to General Contractor directing changes in the Work and/or the time for completion of a Project.
- G. **"Construction and Demolition Debris"** means non-hazardous, non-contaminated solid waste resulting from construction, remodeling, repair or demolition projects on pavement, buildings and other structures. It may include: bricks, rock and other masonry material; wood, including non-hazardous painted, treated and coated wood; scrap metal; plaster and gypsum drywall; plumbing fixtures and piping; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed asphalt pavement; glass and plastics and landscape waste.
- H. **"Construction Manager"** means a firm engaged by the Board to: (i) assist the Board and its Architects; (ii) to provide professional construction management services; and (iii) manage and facilitate the scheduling and completion of the Work in accordance with the Contract Documents for each Project, within the cost and schedule requirements established by the Board.
- I. **"Contract Documents"** means all of the following component parts for a Project, including exhibits attached to them and incorporated in them by reference, and all amendments, modifications and revisions made from time to time in accordance with their provisions:

- 1) This Agreement;
  - 2) Bid Documents, including the Construction Operations Phasing Plan and Schedule, if any;
  - 3) Instructions to Bidders;
  - 4) Notice of Award;
  - 5) Notice to Proceed;
  - 6) Specifications;
  - 7) Change Orders (if any); and
  - 8) Performance and Payment Bond.
- J. **"Day"** means a calendar day unless otherwise specified.
- K. **"Drawings"** are those enumerated in the Schedule of Drawings of the Specifications, and additional drawings and sketches, if any, that may be incorporated into the Contract Documents as Work progresses.
- L. **"Final Acceptance"** means the date on which the Board has determined that all of the requirements of the Contract Documents for a Project have been completed.
- M. **"Preliminary Acceptance"** means the date on which the Board has determined that the Work required under the Contract Documents has been essentially completed for a Project (except for Punch List Work), such that the Users may occupy and fully use the Work, or, if the nature of the Work requires that a Certificate of Occupancy be issued, it means the date of issuance of the Certificate of Occupancy.
- N. **"Program Manager"** (if applicable) means a consultant engaged by the Board to develop system-wide criteria and a program for value engineering, scope oversight, scheduling, and reporting.
- O. **"Project"** means the specific construction Project which is the subject of this agreement.
- P. **"Project Schedule"** means the schedule established for commencement and completion of the Work for a Project and for achieving milestones during the Work.
- Q. **"Punch List"** or **"Punch List Work"** means minor adjustments, repairs or deficiencies in the Work of a Project as determined by the Architect and the Board.
- R. **"Record Documents"** are all documents required under the terms of this Agreement to be provided to the Board by General Contractor, including, but not limited to, shop drawings, mylar as-built drawings, electronic drawings, parts manuals, operation and maintenance manuals, contractors' field drawings, project manuals, Specifications, and any other submittal items for a specific Project.

- S. "Site" means the location shown on the Drawings within which the Work for a Project is performed under the Contract Documents.
- T. "Subcontractor" means any partnership, firm, corporation or entity other than an employee of General Contractor, who contracts with General Contractor to furnish labor, materials, or labor and materials, at a Site. This term also includes subcontractors of any tier, suppliers, fabricators or manufacturers, whether or not in privity with General Contractor. Nothing in this Agreement or the Contract Documents is considered to impose upon the Board, Program Manager, Architect, Construction Manager, or any other Board consultant, any obligation, liability, or duty to a Subcontractor, or to create any contractual relation between the Board, Program Manager, Architect, or Construction Manager and any Subcontractor, or to prejudice remedies granted by applicable laws.
- U. "Work" means the construction and services required by the Contract Documents for a Project, whether completed or partially completed, and includes all other labor, materials, equipment and supplies, plant, tools, scaffolding, transportation, superintendence, insurance, taxes and all other services, facilities and expenses necessary for General Contractor to fulfill General Contractor's obligations. The Work may constitute the whole or a part of a Project.

### 3. TERM

The Contractor shall commence work 10 calendar days after the written execution of the notice to proceed and complete the total project within 400 calendar days.

If General Contractor is performing Work for a Project which is not completed by the end of the Term, the terms and conditions of this Agreement shall continue and will remain in effect until such time as Final Acceptance of such Project.

### 4. SCOPE OF WORK

Contractor shall provide construction services to remove the existing custom acoustic ceiling tiles at Olive-Harvey College and replace with new ceiling tiles. The main college building consists of three above-ground stories, plus a basement totaling approximately 400,000 square feet. Contractor will remove and replace the existing custom acoustic ceiling tiles throughout Olive-Harvey College. Any devices, signage, hangers, etc. on the ceiling that are necessary to remove in order to demolish the existing ceiling tiles and install the new ceiling tiles shall be removed, reinstalled and reconnected by the contractor. For unforeseen HVAC, electrical, code violations or life safety upgrades, \$100,000 is added as a contingency.

### 5. ROLE OF THE GENERAL CONTRACTOR

- A. The Board's right to so restrict General Contractor is in addition to all other rights the Board may have under this Agreement and its rules, at law or in equity, regarding General Contractor's performance. Also, following any restriction imposed pursuant to this Section, the Board, at its sole discretion, may later elect



to extend the size, scope, type, or location, or all of them, of Projects on which General Contractor will be considered to be responsible.

- B. The Board may exercise its rights under the provisions of this Section by notifying General Contractor in writing of the restrictions and the reasons for them and the change will be effective immediately. The decision to restrict General Contractor's participation is solely for the benefit and security of the Board. The decision neither waives the Board's right to declare General Contractor in default under this Agreement or in connection with any Project nor the Board's right to all available remedies at law or in equity, or under this Agreement.
- C. General Contractor's relationship to the Board shall be that of an independent contractor, and neither General Contractor nor any of General Contractor's agents, employees or Subcontractors are entitled to receive Board employee benefits. The Board is not responsible for, and will incur no liability for, any state or federal withholding or other taxes or for FICA and state unemployment insurance for General Contractor, its agents, employees or Subcontractors, and the payment of any such taxes incurred or owed by General Contractor is the sole responsibility of General Contractor. General Contractor must not represent itself as an employee of the Board. General Contractor must provide the Board with a valid taxpayer identification number as defined by the United States Internal Revenue Code.

## 6. COMPENSATION

- A. General Contractor's compensation shall be the Base Contract Price for the specific Project as set forth below:

Base Bid (Including Owner's Allowances:	\$1,415,144.000
Owner Construction Contingency:	\$100,000.00
Grand Total	\$1,515,144.00

A more specific and detailed payment schedule is set forth in Section 42 herein.

- B. Method of Payment. Payment for Work satisfactorily performed on a Project pursuant to a Notice of Award shall be processed by the Board in accordance with the provisions of Section 42 herein, and the Board's specific procedures in place at the time General Contractor submits its invoices.
- C. Payment. General Contractor shall submit all outstanding Change Orders and the application for final payment to the Board within one-hundred fifty (150) days after Preliminary Acceptance of the Work. If General Contractor fails to submit said change orders or final pay application within said one-hundred fifty (150) day period, the Board shall have no obligation to pay the balance due to General Contractor, unless, as a matter of law, General Contractor is prohibited from

providing documentation in support of the Change Orders or final pay application within said one-hundred fifty (150) day period.

**7. PERFORMANCE AND PAYMENT BOND**

Before receiving a Notice to Proceed, General Contractor shall furnish the Board's Chief Purchasing Officer with a Performance and Payment Bond in the full amount of the Base Contract Price, referencing the Contract Documents, and complying with the requirements of Illinois law regarding bonds on public works. The bond shall be in a form and issued by a surety acceptable to the Board, and licensed as a surety by the State of Illinois. The bond is security for the faithful performance of the Contract Documents and the payment of all persons supplying labor, materials, equipment and services of any nature to General Contractor in connection with the Work. The bond shall be furnished together with the current power of attorney for the person or persons signing on behalf of the surety, which power of attorney shall be sealed and certified with "first hand signature" by an officer of the surety. A facsimile signature shall not be accepted by the Board. In addition, the acknowledgment of the principal on the bond shall be notarized with his or her official title identified.

**8. DUTIES AND RESPONSIBILITIES OF GENERAL CONTRACTOR**

**MBE/WBE Plan.** General Contractor acknowledges its familiarity with the requirements of the Board's "Plan for Minority and Women Business Enterprise Economic Participation" ("Plan"). General Contractor shall adhere to the minimum goals for MBE/WBE participation and other applicable MBE/WBE requirements established for Projects awarded under this Agreement and in accordance with the Remedial Plan, as may be amended from time to time.

**9. STANDARDS OF PERFORMANCE**

A. General. General Contractor shall perform, or cause to be performed, all of its duties under this Agreement and all Contract Documents with that degree of skill, care and diligence normally shown by a general contractor performing services of a scope, purpose and magnitude comparable with the nature of the services to be provided herein. Where the duty or Work to be performed requires the exercise of professional skill or judgment, General Contractor shall cause it to be performed by professionals competent to do so and licensed by the State of Illinois in the applicable discipline, if such licensure is required by law. General Contractor is responsible for compliance of the Work with the Contract Documents and the technical accuracy of all submittals furnished under this Agreement and the Contract Documents.

In signing this Agreement, General Contractor accepts the relationship of trust and confidence established between it and the Board and covenants with the Board to furnish its best skill, expertise, and knowledge, and to cooperate with the officials, employees, and agents of the Board in furthering the interests of the Board. General Contractor shall furnish efficient administration, supervision, and

superintendence of all Work that it is required to perform and to use every effort to complete the Work in an expeditious and economical manner consistent with the interests of the Board.

- B. In Performing Work. Unless otherwise specified in the Contract Documents, all materials for a Project shall be new and the best of their respective kinds, of standard weights and dimensions. All workmanship shall be of a high grade throughout and of a quality in keeping with the material and design. In all cases where material and quality are not distinctly specified, specimens or samples shall be submitted to Architect for approval. General Contractor shall use every effort to assure timely and satisfactory performance of the Work and shall perform all Work under this Agreement and all Contract Documents to the reasonable satisfaction of the Board's Chief Operating Officer.
- C. Submittals. Whenever General Contractor is required under this Agreement or under the Contract Documents for a particular Project to prepare reports, documents, shop drawings, or other submittals, General Contractor shall prepare them in form and content satisfactory to the Board and submit them in a timely manner. General Contractor acknowledges that all such submittals are subject to Board review and approval and that General Contractor shall revise and resubmit them until they comply.

**10. GENERAL CONTRACTOR'S REPRESENTATIONS:**

- A. Representations. General Contractor represents that the information furnished and referenced below and the statements below are true and correct as of the effective date of this Agreement and will continue to be true and correct during the Term and any extensions of this Agreement.
- B. Disclosures. General Contractor has truthfully completed a Contractor's Disclosure Form and has delivered same to the Board, and this form is incorporated herein and made a part of this agreement as if fully set forth herein. General Contractor shall promptly notify the Board of any change in ownership or control disclosed in such form, and any such change is subject to Board approval, which the Board will not unreasonably withhold.
- C. Prohibited Acts. Within the three (3) years prior to the effective date of this Agreement, General Contractor or any of its members if a joint venture or a limited liability company, or any of its or their respective officers, directors, shareholders, members, managers, other officials, agents or employees: (i) have not been convicted of bribery or attempting to bribe a public officer or employee of any public entity; and (ii) have not been convicted of agreeing or colluding among contractors or prospective contractors in restraint of trade, including bid-rigging or bid-rotating, as those terms are defined under the Illinois Criminal Code.

- D. Prohibited Economic Interests. No officer, agent or employee of the Board is or shall be employed by General Contractor and no such officer, agent or employee of the Board has or shall have a financial interest, directly or indirectly, in this Agreement, except as may be permitted in writing under the Board's Ethics Policy, as may be amended from time to time, which is incorporated herein and made a part of this Agreement as if fully set forth herein.
- E. Defaults under Other Agreements. General Contractor, each of its members, if a joint venture or limited liability company, and each of its Subcontractors, if any, are not in default or have not been deemed by the Chief Purchasing Officer to be in default under any other agreement with the Board during the five (5) year period immediately preceding the effective date of this Agreement
- F. Kickbacks. Neither General Contractor, nor any of its members if a joint venture or limited liability company, nor any Subcontractor, has accepted and shall not accept from or on behalf of any Subcontractor to General Contractor or any intermediate tier Subcontractor, any payment, gratuity or offer of employment in relation to this Agreement or as an inducement for award of a Project in connection with this Agreement. General Contractor is and shall remain in compliance with all applicable anti-kickback laws and regulations.
- G. Authority. General. Contractor has taken all action necessary for the approval and execution of this agreement, and is duly authorized to execute this Agreement which constitutes the valid, binding obligations of General Contractor.
- H. Discrimination. During the Term and any extension or renewal thereof, General Contractor shall not commit an unlawful employment practice as set forth in subparagraph A below; and General Contractor shall be in compliance with the laws and regulations set forth in subparagraph B below.
- 1) Unlawful Employment Practices. It is an unlawful employment practice for General Contractor or any of its members to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status, or national origin; or to limit, segregate, or classify employees or applicants for employment from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status, or national origin. It is also an unlawful employment practice for General Contractor or any of its members to subject any Board employee, applicant participant, student or volunteer to unwelcome sexual advances, requests for sexual favors or conduct of a sexual nature when submission to or rejection of such conduct is: (i) made either explicitly or implicitly a term or condition of such person's

employment, participation or receipt of services; (ii) is used as a basis for a decision affecting the individual's employment, participation or receipt of services; or (iii) has the purpose of creating an intimidating, hostile, or offensive working or learning environment.

- 2) Compliance. General Contractor shall comply with the Civil Rights Act of 1964, 42 U.S.C.A., § 2000, et seq., as amended.; the Age Discrimination in Employment Act, 29 U.S.C.A. § 621, et seq.; The Rehabilitation Act of 1973, 29 U.S.C.A. § 701, et seq., as amended; the Americans With Disabilities Act, 42 U.S.C.A. §12101, et seq.; the Illinois Human Rights Act, 775 ILCS 5/1-10, as amended; the Chicago Human Rights Ordinances, MCC Ch 2-160; the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.; the Public Works Employment Discrimination Act 775 ILCS 10/0.01 through 10/20, inclusive; and the Board's residency requirements for contracts awarded by the Board. General Contractor shall furnish the reports and information as requested by the Board and the Illinois Department of Human Relations.

- I. Wages and Salaries. Salaries of employees of General Contractor performing work under the Contract Documents shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only the payroll deductions that are mandatory or permitted by applicable laws or regulations. Attention is called to Illinois Compiled Statutes relating to Wages and Hours, including without limitation 820 ILCS 130/0.01 through 130/12 (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act). General Contractor shall comply with all applicable Anti-Kickback laws and regulations, including the Anti-Kickback Act (18 U.S.C. Sec. 874) and the Illinois Criminal Code (720 ILCS 5/33-1 et seq).

The Board requires that the general prevailing rate of wages and other applicable benefits, if any, in the locality for each craft or type of worker or mechanic needed to execute this Agreement or perform any such work awarded pursuant to this Agreement, as ascertained by the Illinois Department of Labor, shall be paid to such workers by their employer.

If, in the performance of this Agreement or the Contract Documents, there is any direct or indirect kickback, such as, but not limited to, underpayment of wages or salaries by General Contractor, the Board has the right to withhold from General Contractor out of payments due to it an amount sufficient to pay the employees underpaid the difference between the salaries required to be paid under the Contract Documents and the salaries actually paid the employees for the total number of hours worked. The amounts withheld shall be disbursed by the Board for and on account of General Contractor to the respective employees to whom they are due. General Contractor and all its Subcontractors shall comply with the provisions of all applicable Board policies.

- J. Compliance; Monitoring. Regardless of any provisions elsewhere in this Agreement to the contrary, General Contractor shall disclose at least 100% of its proposed MBE/WBE economic participation in the Work at the time of bid. General Contractor shall comply with its MBE/WBE commitments set forth in its bid and cooperate with the Board's compliance officers. General Contractor shall fulfill all of its reporting obligations in a timely manner.

## 11. WARRANTY

- A. General Contractor warrants to the Board that: (i) all materials and equipment furnished under the Contract Documents shall be of good quality and new unless otherwise required or permitted by the Contract Documents; (ii) the Work shall be free from defects not inherent in the quality required or permitted; and (iii) the Work shall conform with the requirements of the Contract Documents. The Board and Architect are entitled to consider Work not conforming to these requirements, including substitutions not properly approved and authorized, defective. General Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by General Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by Architect, General Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- B. General Contractor warrants all of the Work for a Project and each and every part of it, including, by way of illustration and not in limitation, all workmanship, materials, equipment, supplies, services and facilities that are furnished, produced, fabricated, installed, constructed or built pursuant to the Contract Documents for the respective periods of time called for by the respective requirements of the Contract Documents, and, if no period is specified, then for a period of one (1) year, against defects that, in the opinion of Architect, result from the use of defective or inferior materials, equipment, supplies, services, facilities or workmanship or from Work not in compliance with or not performed in accordance with the Drawings or Specifications. The warranty period shall run from and after the date of Preliminary Acceptance of all Work required by the Contract Documents, unless the Contract Documents specify a different date for the warranty period to begin running. No part of the Work shall be held to be accepted until Final Acceptance of all of the Work. General Contractor shall, as part of this warranty: (i) repair, remove and replace as directed by the Board, and at no cost to the Board all the Work, materials, equipment, supplies, services and facilities that prove defective during the applicable warranty period or that fail to conform to the Contract Documents and (ii) repair, remove and replace, or pay for as directed by the Board and at no cost to the Board, all damaged portions of the Project and the contents and equipment of it, resulting from or that are incidental to the defects or failure to conform to the Drawings or Specifications. General Contractor shall begin all repairs, removals, and replacements within ten (10) business days after the Board gives written notice and shall furnish workers and materials sufficient, in the opinion of the Board, to ensure their prompt completion. The written notice from the Board shall have attached to it the

opinion of Architect stating that the defective Work was not performed in accordance with the Contract Documents. Should General Contractor fail to proceed in accordance with these requirements, the Board without further notice to General Contractor (and without any obligation whatsoever and without limiting the Board's rights and remedies under this Agreement or at law or equity) may furnish all labor and material necessary for repairs, or removals and replacements, and General Contractor shall pay the Board all costs and expenses incurred as a result of General Contractor's failure to do so. Notification by the Board of non-conforming or defective Work tolls the running of General Contractor's warranty with respect to the nonconforming or defective Work and of other Work affected by the nonconforming or defective Work. The warranty period for the corrected Work begins anew from the date the replaced or restored Work is accepted by the Board and runs for the full length of time as required under the Contract Documents for the portion of the Work corrected and for that Work affected by it. Prior to the commencement of a Project, General Contractor agrees to execute and deliver a Warranty to the Board in the form of Exhibit D attached hereto.

## **12. MANUFACTURERS' WARRANTIES**

At Final Acceptance of the Work, General Contractor shall furnish the Board two (2) original complete sets of all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work (collectively referred to as "Manufacturers' Warranties"), completed in favor of the Board. These Manufacturers' Warranties are in addition to and not in lieu of any other of General Contractor's warranties stated herein, and the Board is entitled to look to General Contractor for remedy in all cases where General Contractor's warranty applies regardless of whether a Manufacturer's Warranty also applies. The Construction Manager shall acknowledge receipt of the sets of Manufacturers Warranties on the set itself, and General Contractor shall cause six (6) copies of an acknowledged set to be made and furnish them to the Construction Manager for distribution as the Board directs.

## **13. INSURANCE**

General Contractor must provide and maintain at General Contractor's sole cost and expense, until Final Acceptance and during the time period following Final Acceptance if General Contractor is required to return and perform any additional Work, the minimum insurance coverages and requirements specified below, insuring all operations related to this Agreement. All insurers shall be licensed by the State of Illinois and rated A-VII or better by A.M. Best or a comparable rating service. General Contractor shall submit to the Board satisfactory evidence of insurance coverage and, upon request, shall promptly provide a certified copy of any applicable policy of insurance. Minimum insurance requirements are:

### **A. Workers Compensation and Employers Liability**

Workers' Compensation and Employers' Liability Insurance. Workers' Compensation Insurance affording workers' compensation benefits for all employees as required by law and Employers' Liability Insurance covering all General Contractor's employees who work on a Project, with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.

B. Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: all premises and operations, products/completed operations, (for minimum of two (2) years following Final Acceptance), explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The Board of Trustees of Community College District No. 508 is to be named as additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

C. Automobile Liability

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the General Contractor must provide Automobile Liability Insurance, with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage. The Board of Trustees of Community College District No. 508 is to be named as additional insured on a primary, non-contributory basis.

D. Professional Liability

When any architects, engineers, construction managers or other professionals perform Work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$5,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of Work under this Agreement. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years.

E. Property

The General Contractor is responsible for all loss or damage to all property (including but not limited to materials, equipment, tools, and supplies) owned, rented, or used by General Contractor.

F. Additional Requirements

- 1) Additional Insured. General Contractor shall have its General and Automobile Liability Insurance policies endorsed to provide that the Board of Trustees of Community College District No. 508, a body politic



and corporate, and its members, employees and agents, and any other entity as may be designated by the Board, are named as additional insureds on a primary basis without recourse or right of contribution from the Board.

- 2) Insurance Certificate. The insurance company, or its representative, shall submit an insurance certificate evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. The Board will not pay General Contractor for any work if satisfactory proof of insurance is not provided prior to the commencement of Work. The Certificate must provide thirty (30) days prior written notice of material change, cancellation, or non-renewal.
- 3) General. Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of General Contractor's obligation to obtain the required insurance. The receipt of any certificate does not constitute an agreement by the Board that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all the requirements of this Agreement.

General Contractor's failure to carry or document required insurance shall constitute a breach of this Agreement. Non-fulfillment of the insurance conditions may constitute a breach of this Agreement, and the Board retains the right to stop Work until proper evidence of insurance is provided, or this Agreement may be terminated. The Board will not pay the General Contractor for any Work if satisfactory proof of insurance is not provided before the commencement of Work.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by General Contractor. Any insurance or self-insurance programs maintained by the Board do not contribute with insurance provided by the General Contractor under this Agreement.

All Subcontractors are subject to the same insurance requirements of General Contractor unless otherwise specified in this Agreement. The General Contractor shall require any Subcontractors under this Agreement to maintain comparable insurance naming the General Contractor, the Board inclusive of its members, employees and agents, and any other entity designated by the Board, as Additional Insureds. The General Contractor will maintain a file of Subcontractor's insurance certificates evidencing compliance with these requirements.

The coverages and limits furnished by General Contractor in no way limit the General Contractor's liabilities and responsibilities specified within the Contract or by law. The required insurance is not limited by any limitations expressed in

the indemnification language in this Contract or any limitation placed on the indemnity in this Contract given as a matter of law.

The General Contractor agrees that insurers waive their rights of subrogation against the Board.

Upon Board request, General Contractor and/or its Subcontractors shall promptly provide a certified copy of any applicable policy of insurance. The Board reserves the right to modify, delete, alter or change insurance requirements at any time.

#### 14. GENERAL SAFETY GUIDELINES

- A. General Contractor shall be solely responsible for safety on the Site. General Contractor shall adhere to any and all safety related requests by the Board and the Board's designated representatives, including submission, upon the request of the Board, of General Contractor's Safety Manual and/or a Site specific safety plan.
- B. General Contractor, both directly and indirectly through its Subcontractors, shall continuously protect the Work and the Board's property from damage, injury or loss arising in connection with operations under the Contract Documents. General Contractor shall make good any such damage, injury or loss. General Contractor is responsible for Site security. Dogs or other animals are not allowed.
- C. General Contractor, both directly and indirectly through its Subcontractors, shall take all necessary precautions to ensure the safety of the public and workers on the Site, and to prevent accidents or injury to any persons on, about, or adjacent to the Site where the Work is being performed.
- D. General Contractor shall comply with all laws, ordinances, codes, rules and regulations relative to safety and the prevention of accidents. General Contractor, and its Subcontractors, shall cooperate with any other contractor that may be performing work on the Site, including, but not limited to, OSHA compliance and safety efforts. Upon the request of the Board, General Contractor and its Subcontractors, shall provide the Board with their Exposure Control Plan, Hazard (HazMat) Communications Plan and other safety related documents and programs.
- E. General Contractor shall erect and properly maintain, at all times, as required by laws and regulations and the conditions and progress of the Work, proper safeguards for the protection of workers, staff, students, and the public. Proper safeguard include, but are not limited to, eight (8) foot tall temporary chain link fencing around all areas of construction activity, warning signage, protective scaffolding, or whatever means are required to protect workers, students, staff, and the public. If such proper safeguards are not taken by the General Contractor, the Board reserves the right (without incurring any obligation whatsoever and without limiting any other right or remedy which the Board may have under this Agreement or at law or equity) to take such action as necessary to so protect

workers, students, staff, and the public and to back charge the General Contractor for the cost thereof. Appropriate precautions must be taken when Work is performed when school is in session and/or students are on a Site and extra hazardous work shall not be performed when school is in session and/or students are on a Site.

- F. In an emergency affecting the safety of life, the Work or adjoining property, General Contractor, without special instructions or authorization from the Architect or the Board, is permitted to act, at its discretion, to prevent the threatened loss or injury.
- G. General Contractor shall protect private and public property adjacent to the Work, including all streets, sidewalks, light poles, hydrants and concealed or exposed utilities of every description affected by or adjacent to the Work. If the items are damaged by General Contractor or its Subcontractors, General Contractor shall make all necessary repairs to or replacements of them at no cost to the Board.
- H. If, in the opinion of the Board, General Contractor's Work endangers adjoining property or persons, upon written notice from the Board to the General Contractor, the Work shall be stopped and the method of operation changed in a manner acceptable to the Board. General Contractor acknowledges and agrees that it shall be responsible for any financial repercussions resulting therefrom and that contract schedules will not be postponed as a result thereof.
- I. When performing the Work, General Contractor shall comply with the Construction Operations Phasing Plan and Schedule included in the Construction Documents.
- J. General Contractor shall remove all snow and ice as may be required for the proper protection and/or prosecution of the Work. General Contractor shall, at all times, provide and maintain adequate protection against weather (including, but not limited to rain, winds, storms, snow, sleet, frost or heat) so as to preserve and keep all Work, materials, equipment, apparatus and fixtures free from injury or damage.
- K. Adequate precautions shall be taken against fire throughout all General Contractor's and Subcontractors' operations. Flammable material shall be kept at an absolute minimum and, if any, shall be properly handled and stored. Except as otherwise provided in the Contract Documents, General Contractor shall not permit fires to be built or open salamanders to be used in any part of the Work.
- L. General Contractor shall provide and maintain adequate protection for all properties adjacent to the Site. When required by law or for the safety of the Work, General Contractor shall shore up, brace, underpin and protect as necessary, adjacent pavements, foundations and other portions of existing structures that are in any way affected by the operations under the Contract

Documents. General Contractor, before beginning any part of the Work, shall give any notices required to be given to any adjoining landowner or other parties.

- M. General Contractor shall cooperate with any other contractor that may be performing work on the Site in connection with the compliance with regulations of OSHA and all other federal, state, and municipal laws, rules and regulations relating to job site safety and practice including, as may be relevant, appealing decisions, correcting work within abatement periods, appealing or requesting extensions on abatement periods when work has been done by other contractors and furnishing the supporting information or material as may be necessary to fully protect the rights of the Board, its representatives, and other contractors on pending or prospective violation orders.
- N. Unless otherwise noted, all existing fixtures, furniture, and equipment, shall be carefully removed by General Contractor to a nearby area, protected from damage of any kind, before Work begins in that area. General Contractor shall return the items to the originally designated place at the finish of the Work. For electronic or utility hook-ups, the Board shall be notified in advance, and allowed sufficient time to disconnect items before removal. Hook-ups shall to be reconnected by the Board after replacement of furniture and equipment by General Contractor.
- O. General Contractor shall comply with the Construction Operations Phasing Plan and Schedule included in the Construction Documents when performing the Work.
- P. General Contractor shall maintain a written policy regarding drug and/or alcohol testing of employees and shall implement such policy at any time that General Contractor, or any of General Contractor's supervisory personnel, form a reasonable suspicion that such testing may have a positive result. The said policy shall also require the testing of all employees directly or indirectly involved in any incident or accident in which a physical injury has occurred, as soon as practicable after the incident or accident. In order to insure that all Subcontractors on the Project maintain and implement similar testing policies, General Contractor shall require a similar written policy in each subcontract. If the results of any such test are positive, the Board reserves the right to require the removal from the Site, either temporarily or permanently, of any person receiving positive results from any of the aforesaid tests.

**15. ENVIRONMENTAL COMPONENTS OF THE WORK**

- A. If the Contract Documents require General Contractor to manage or perform any environmental Work, or if in the course of the Work an environmental hazard is encountered requiring action, General Contractor shall cooperate and coordinate its Work in all respects with that of the Board's environmental consultants, perform its Work according to safe and approved protocols and procedures, and utilize only fully qualified and licensed abaters and remediators, and sequence and perform Work to minimize environmental contamination of the Site. Whenever

General Contractor's Work involves an existing Board facility, General Contractor shall consult with the Board, including its consultants and the building engineer, if any, to determine whether previous abatement, remediation, stabilization, or containment work has been performed at the facility. If so, General Contractor shall perform its Work under the Contract Documents so as not to undo or disturb the prior work. General Contractor shall be responsible for all costs the Board incurs for General Contractor's failure to comply with such protocols and procedures, or for its failure to consult and protect the integrity of the prior work; such costs may include without limitation any costs associated with cleaning any area contaminated by General Contractor's (or its Subcontractors') failure to comply with these requirements.

- B. If General Contractor encounters material on the Site reasonably believed to be hazardous that has not been identified in the Contract Documents or rendered harmless, General Contractor shall immediately stop work in the area affected and report the condition to the Board, Architect, Construction Manager, and Program Manager in writing and comply with a Board-approved plan for identifying and handling the material. If no plan is in place, General Contractor shall await and follow directions of the Architect and the Board. The Work in the affected area shall be resumed in the absence of hazardous materials, or when it has been rendered harmless. If reasonable precautions shall be inadequate to prevent foreseeable bodily injury or death to persons resulting from material or substance encountered on the Site by General Contractor, General Contractor shall, upon recognizing the condition, immediately stop work in the affected area and report the condition to the Board, Architect, Construction Manager, and Program Manager in writing. The Board, General Contractor, and Architect shall then proceed in the same manner described in the Section immediately above. The Board, through one or more environmental consultants, shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the materials or substance reported by General Contractor and, if the material or substance is found to be present, to verify that it has been rendered harmless.

## **16. CONTRACTOR'S LIABILITY**

- A. Assumption of Liability. General Contractor assumes all liability for its own negligence and the negligence of its own employees and agents. General Contractor shall require its Subcontractors to assume all liability for their own negligence and the negligence of their own employees and agents.
- B. Indemnification. General Contractor or its Subcontractors, or both, as the case may be, shall compensate the Board and any other local governmental body with an interest in any Work or Project, and their respective officers, directors, shareholders, officials, managers, members, trustees, commissioners, employees, or agents, including the Program Manager, Architect, and Construction Manager (collectively, the "Board Indemnitees") for any claim, loss, liability, damage, or expense (including reasonable attorney fees and court costs), the Board Indemnitees incur on account of any negligence, recklessness, or willful

misconduct of General Contractor or its employees, any Subcontractor or the Subcontractor's employees, in the performance of any Work in connection with this Agreement. To the extent permitted by law, any limit on such liability that would otherwise be available by virtue of the Worker's Compensation Act or any other law or judicial decision is expressly waived as to the Board Indemnitees. However, nothing in this Section is intended to be, and shall not be, construed as an agreement to indemnify or hold harmless the Board Indemnitees on account of their own negligence. General Contractor acknowledges that any performance bond or insurance provided under this Agreement in no way limits General Contractor's responsibility to compensate the Board Indemnitees as provided in this Section. General Contractor is not liable under this Section for the errors or omissions of Architect, its agents or employees arising out of Architect's (or its agents' or employees') preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or Specifications or giving or failing to give directions or instructions, but only if the giving or failing to give directions or instructions is the primary cause of the injury or damage.

- C. General Contractor, where separate contractors or their Subcontractors are employed on the Site, shall not hold the Board responsible for loss or damage or injury caused by any fault or negligence of any other contractor or Subcontractor and General Contractor shall look to the contractors or Subcontractors for recovery from them for any such damage or injury.

If any separate contractor or its subcontractor suffers loss or damage through any acts or omissions on the part of General Contractor, or any of its Subcontractors, General Contractor shall reimburse the other contractor or its subcontractor by agreement or arbitration, if they shall so settle. If the separate contractor or its subcontractor asserts any claim against the Board on account of any damage or loss alleged to have been so sustained, the Board shall notify General Contractor, and General Contractor shall indemnify, defend, and hold the Board harmless from and against those claims as provided herein.

- D. Limitation of Liability. In no event, whether as a result of termination for default, termination for convenience, suspension of the Work, breach of contract, negligence, or otherwise, shall the Board be liable for damages for loss of profits, loss of use, loss of revenue, loss of bonding capacity, or any other special, indirect or consequential damages of any kind. The Board's total liability for any loss, claim, or damage arising out of the Contract Documents or the performance or breach thereof is limited to the value of the Work performed or the Base Contract Price, whichever is less.

- E. Non-Liability of Individuals. No Board member, officer, director, shareholder, manager, employee, agent, officer, consultant acting on the Board's behalf, or official of the Board shall be personally liable to General Contractor or others claiming by, under, or through General Contractor in connection with this Agreement or any Contract Documents. General Contractor, its members, if a limited liability company or a joint venture, or any of its Subcontractor shall not

personally charge any Board member, officer, director, shareholder, manager, employee, agent, officer, or official of the Board with any liability or expense in connection with this Agreement or any Contract Documents because of the Board's execution or attempted execution of it, or because of any breach of it.

**17. RIGHT OF ENTRY**

- A. General Contractor and its Subcontractors and their respective officers, employees, and agents performing the Work are permitted to enter the Site in connection with the performance of the Work, subject to the terms and conditions contained in the Contract Documents and those rules established by the Board. General Contractor shall provide advance notice of its intended entry to the principal and building engineer whenever Work is to be performed at an existing school Site, and also to the Board regardless of the type of Site. Consent to enter a Site given by the principal, building engineer, or the Board does not create, and shall not be construed to imply the creation of, any additional responsibilities on the part of the Board.
- B. General Contractor shall use, and shall cause its Subcontractors and their respective officers, employees, and agents to use, the highest degree of care when entering a Site in connection with the Work. General Contractor and its Subcontractors and their respective officers, employees and agents shall comply with all instructions and requirements for the use of the Site, and any leases or licenses for the use of the Site, whether the Site is owned, licensed, or leased by the Board or licensed or leased from the Board.
- C. All claims, suits, judgments, costs, or expenses, including attorney's fees, arising from or in connection with any such entries shall be treated in accordance with the terms and conditions of the Contract Documents.

**18. CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

- A. The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work for a Project. General Contractor shall provide any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, as if shown or mentioned in both.
- B. General Contractor shall coordinate the various parts of the Work so that no part is left in an unfinished or incomplete condition owing to any disagreement between the various Subcontractors or any of the Subcontractors and General Contractor, as to where the work of one begins and ends with relation to the work of the other.
- C. Generally, the Specifications describe work that cannot be readily indicated on the Drawings and indicate types, qualities and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of work in the Specifications that can be adequately shown on the

Drawings nor to show on the Drawings all items of work described or required by the Specifications even if they are of such nature that they could have been shown on them. General Contractor shall provide all materials or labor for Work that is shown on the Drawings or is reasonably inferable from them as being necessary to produce a finished Project or product whether or not the Work is expressly covered in the Specifications.

- D. Except as otherwise noted in the Drawings or Specifications, General Contractor shall furnish materials that are shown on the Drawings and that are not specifically described in the Specifications or Drawings, suitable for the intended use, compatible with adjacent materials, and subject to review for conformity with the intent of the Contract Documents. Installation techniques not specified in the Contract Documents shall be in accordance with manufacturer's currently published instructions and industry standards.
- E. The Board may elect to pre-purchase certain major materials, such as structural steel, windows, kitchen equipment, and the like, for use on a Project, and if so, the Contract Documents shall describe the procedures established for requisitioning them through the Board.
- F. Where requirements of the Contract Documents differ from what is required under applicable laws, ordinances, rules, regulations, orders, building codes or the requirements of authorities having jurisdiction over a Project, General Contractor shall provide that which is the most stringent of them, and, except for material discrepancies caused by Architect's errors and omissions, General Contractor shall provide, within the Base Contract Price, that which is required. General Contractor shall, whenever there is a discrepancy or apparent discrepancy, seek clarification and approval in advance from Architect, and especially where a material discrepancy of this nature would result in a claim for extras.
- G. By submitting a bid for a Project, General Contractor represents and warrants that General Contractor has visited the Site, is familiar with local conditions under which the Work is to be performed and has correlated personal observations with the requirements of the Contract Documents.

## **19. EXPLANATION OF SPECIFICATIONS**

- A. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings is for convenience only and does not dictate or determine the trade or craft involved. The separations do not operate to make Architect an arbiter for the division of responsibility between General Contractor and Subcontractors or between Subcontractors, and the separations do not relieve General Contractor from the responsibility of satisfactorily completing the entire Work, regardless of the trade divisions.
- B. The Specifications are of abbreviated or "streamlined" type and may include incomplete sentences. Omissions of words or phrases such as "the Contractor



shall (or must)", "in conformity therewith", "shall (or must) be", "as noted on the Drawings", "according to the plans", "a", "an", "the", and "all" are intentional. Omitted words and phrases shall be supplied by inference in the same manner as they are when a "Note" occurs on Drawings. Words "shall (or must) be" or "shall (or must)" are to be supplied by inference where a colon (:) is used within sentences or phrases.

- C. Where "as shown", "as indicated", "as detailed" or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where "as directed", "as required", "as permitted", "as authorized", "as approved", "as accepted", "as selected", or words of similar import are used in the Specifications, the direction, requirement, permission, authorization, approval, acceptance or selection by Architect is intended unless otherwise stated.
- D. "Provide" means "provide complete in place" or "furnish and install", as the context may require.

## **20. STANDARD SPECIFICATIONS**

Any reference in the Contract Documents to standard specifications of any society, institute, association or governmental authority (these standard specifications not forming a part of any statute or ordinance, nor otherwise being specified as to edition or date), is a reference to the standard specifications of the organization that are in effect on the 180th day before the date of the first advertisement for bids of a Project. If the specifications are revised before completion of any part of the Work on the Project to which the revision would pertain, General Contractor may, if approved by the Board, perform the Work in accordance with the revised specifications.

## **21. OWNERSHIP OF DRAWINGS, SPECIFICATIONS AND MODELS**

All copies (in whatever form, including, without limitation, electronic) of Drawings and Specifications furnished by Architect are the property of the Board. The copies are not to be used on any other Work or Project whatsoever and, with the exception of General Contractor's signed set, are to be returned to the Board on request at the completion of the Work. All models are the property of the Board.

## **22. THE ARCHITECT, THE BOARD, AND BOARD CONSULTANTS**

- A. Architect represents the Board during the construction period of a Project and shall observe and inspect the Work periodically. Architect has the authority to act on behalf of the Board only to the extent expressly provided in the Contract Documents or otherwise in writing, which shall be shown to General Contractor upon request. Architect has the authority to reject the Work whenever the rejection may be reasonably necessary to ensure the proper execution of the Contract Documents. Architect is the initial interpreter of the Contract Documents with respect to matters within Architect's professional expertise, such as, but not limited to, the design and Specifications and General Contractor's

compliance with them. In the event of a dispute, Architect shall render written interpretations regarding the items to be included within the Work to the Board.

- B. Architect shall, within a reasonable time, make recommendations on all claims of General Contractor and make decisions on all other matters relating to the execution and progress of the Work and the interpretation of the Contract Documents. The Board shall not entertain any claim of General Contractor that has not first been reviewed.
- C. Architect, Construction Manager, and Program Manager are not liable for General Contractor's performance of the Work or for any defects, deficiencies or effects resulting from any of them, or those of any Subcontractor, manufacturer, supplier, fabricator, or any other third party (including anyone working or acting by, through, or on behalf of any of them).
- D. The services of Architect, Construction Manager, and Program Manager are performed solely for the benefit of the Board. General Contractor, its Subcontractors, suppliers, fabricators, manufacturers or other third parties are not entitled to have any claim against them or the Board as a result of the performance or nonperformance of their respective services. General Contractor shall bring this provision to the attention of its Subcontractors, suppliers and other parties with whom it contracts and have them do the same with those with whom they contract.
- E. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Board, Architect and General Contractor shall communicate with General Contractor through the Construction Manager. Communications by and with Subcontractors and material suppliers shall be through General Contractor.

## **23. APPROVALS**

In various places, the Contract Documents require General Contractor to obtain conformance reviews from or to submit drawings, notices, claims, or other documents to various persons. In general, it is the intent of the Contract Documents that the Architect, as the person professionally responsible for the design and Specifications, and the Board, as owner or in the owner's stead (where another governmental body owns the Site), have the power of approval and disapproval, while the Program Manager and the Construction Manager make recommendations and suggestions to the Board. With respect to submittals, the designation of various persons to receive them does not relieve General Contractor or its Subcontractors of any statutory notice requirements, but rather it is intended to speed up recommendations and the review process where the actions of several persons is called for.

## **24. SUBMITTALS**

- A. General Contractor shall review, approve and submit to Architect shop drawings, product data, samples and similar submittals required by the Contract Documents

with reasonable promptness and in the sequence that shall cause no delay in the Work or in the activities of the Board or of separate contractors. Submittals made by General Contractor that are not required by the Contract Documents may be returned without action.

- B. General Contractor shall not perform any portion of the Work requiring submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been approved by Architect. The Work shall be in accordance with approved submittals.
- C. By approving and submitting shop drawings, product data, samples and similar submittals, General Contractor represents and warrants to the Board that General Contractor has determined and verified materials, field measurements, and field construction criteria related to them, or shall do so, and has checked and coordinated the information contained within the submittals with the requirements of the Work and of the Contract Documents.
- D. General Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Architect's approval of shop drawings, product data, samples or similar submittals unless General Contractor has specifically informed Architect, in writing, of the deviation at the time of submittal and Architect has given written approval to the specific deviation. General Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by Architect's approval of them.

## **25. SUBSTITUTIONS AND ALTERNATES**

- A. Whenever in the Contract Documents the term "Substitute," in any of its forms, is used in connection with products or processes other than those specified, it is intended to refer to the products or processes offered in the post-award period. The term "Alternate", in connection with products or processes other than those specified, is intended to refer to products or processes bid as alternates to the named products or processes.
- B. Whenever any manufacturer's or distributor's brand of product (or trade name or catalog reference) is specified for an item of Work, the words "or equal" are understood to apply, and equal Alternates and equal Substitutions shall be considered unless otherwise expressly stated.
- C. Notwithstanding the foregoing, the following are not considered to be requests for Substitutions:
  - 1) Substitutions requested by the General Contractor during the bidding period, and accepted by the Board through an Addendum prior to the issuance of a Notice of Award, are considered to be included in the Contract Documents and are not considered to be a Substitute under the terms of this Agreement.

- 2) Revisions to the Contract documents requested by the Board or the Architect.
  - 3) Options to products or construction methods which are included in the Contract Documents.
  - 4) Options to products or construction methods which are required in order to comply with the laws, rules, and regulations of any governmental authority having jurisdiction over the Work.
- D. All requests for Substitutions shall be made in writing to the Architect and shall be accompanied by proof, satisfactory to the Board and Architect, that: (i) they are equal in quality, availability, and serviceability to the specified products, (ii) their use shall not entail changes in details and construction of related Work, (iii) they are acceptable in consideration of the required design and artistic effect and function, and (iv) there is a cost advantage to the Board.
- E. The Architect shall consider requests for Substitutions which are received by the Architect within thirty (30) days after the date of the Notice to Proceed. Any such requests which are received by the Architect more than thirty (30) days after the date of the Notice to Proceed may be considered or rejected in the sole and absolute discretion of the Architect. Any request for such consideration shall be made in triplicate and shall include the following:
- 1) Identification of the product or the fabrication or installation method to be replaced, including the Specification Section and Drawing numbers.
  - 2) Complete documentation showing compliance with all of the requirements for Substitutions and all of the following information, as appropriate:
    - a. Coordination information, which shall include a list of changes or modifications needed to other parts of the Work and to the construction to be performed by the Board and other contractors, that are necessary to accommodate the proposed Substitution.
    - b. A detailed comparison of significant qualities of the proposed Substitution with the original.
    - c. Product data, including Drawings, and descriptions of products and fabrication and installation procedures.
    - d. Samples, when applicable or requested.
    - e. A statement comparing the Construction Schedule with and without the Substitution and representing and warranting that the Substitution will not extend the Contract Time.

- f. Cost information, including a proposal of the net change, if any, in the Contract Sum.
  - g. A certification that the proposed Substitution conforms to the requirements of the Contract Documents in every respect and is appropriate for the applications indicated.
  - h. The General Contractor's waiver of right to any additional payment or time that may subsequently become necessary because of the failure of the Substitution to properly perform.
- F. The Architect shall receive and consider the General Contractor's request for Substitutions when one or more of the following conditions are satisfied, which determination shall be in the sole and exclusive determination of the Architect. If any one or more of the following conditions are not so satisfied, the number and importance of which shall be in the sole and exclusive determination of the Architect, the Architect shall return the request for Substitution without action except to state noncompliance with the Requirements of this Agreement:
  - 1) Extensive revisions to the Contract Documents are not required.
  - 2) The proposed changes are in keeping with the general intent of the Contract Documents.
  - 3) The request is timely, fully documented, and properly submitted.
  - 4) The specified product or method of construction cannot be provided within the Contract Time. The Architect shall not consider the request if the product or method cannot be provided as a result of failure by the General Contractor to pursue the Work promptly or properly coordinate its activities.
  - 5) The request is directly related to an "or-equal" clause or similar language in the Contract Documents.
  - 6) The Substitution offers the Board a substantial advantage, in cost, time, energy conservation, or other similar considerations, after deducting additional responsibilities the Board must assume. The Board's additional responsibilities may include compensation to the Architect for redesign and evaluation services, increased cost of other construction by the Board, and similar considerations.
  - 7) The specified product or method of construction cannot receive necessary approval by applicable governmental authority, and the requested Substitution can be approved.
  - 8) The specified product or method of construction cannot be provided in a manner that is compatible with other materials and where the General

Contractor certifies that the Substitution will overcome the incompatibility.

- 9) The specified product or method of construction cannot be coordinated with other materials and where the General Contractor certifies that the proposed Substitution can be coordinated.
  - 10) The specified product or method of construction cannot provide the warranty required by the Contract Documents and where the General Contractor certifies that the proposed Substitution provides the required warranty.
- G. Where a proposed Substitution involves more than one prime contractor, General Contractor shall cooperate with the other contractor(s) involved to coordinate the Work, provide uniformity and consistency, and assure compatibility of products.
- H. The submission of a request for a Substitution by the General Contractor and the Architects acceptance of Shop Drawings, Product Data, or Samples for construction activities not complying with the Contract Documents does not constitute an acceptable or valid request for Substitution, nor does it constitute approval by the Architect.
- I. Within seven (7) days of the request for a Substitution, the Architect shall have the right to obtain additional information or documentation for the General Contractor in order to evaluate the request for a Substitution. The Architect shall notify the General Contractor of acceptance or rejection of the request for a Substitution on the last to occur of fourteen (14) days of receipt of the request or seven (7) days of receipt of such additional information or documentation.
- J. General Contractor agrees to request a Substitution on the Substitution Request Form then in use by the Board at the time of such request.

**26. ARCHITECT'S ADDITIONAL INSTRUCTIONS**

- A. With reasonable promptness, Architect shall furnish additional instructions, by means of drawings or otherwise, necessary for the proper execution of the Work. All such instructions shall be consistent with the Contract Documents, or approved modifications of or true developments from them, and reasonably inferable from them. General Contractor shall cause the Work to be executed in conformity with the Contract Documents and the additional instructions and General Contractor shall do no work without proper drawings or instructions. In giving additional instructions, Architect has authority to make minor changes in the Work consistent with the intent of the Contract Documents and involving no extra cost (but not those granting additional time).
- B. Wherever typical parts or sections of the Work are completely detailed on the Drawings and other parts of sections that are essentially of the same construction

are shown in outline only, the complete details apply to the Work that is shown in outline.

- C. General Contractor shall not determine dimensions of Work by scaling dimensions from the Contract Documents and the General Contractor shall verify all Contract Document dimensions in the field.

## 27. CONSTRUCTION SCHEDULES

- A. Time Is of the Essence in Prosecuting and Completing the Work. General Contractor, within fifteen (15) working days after being awarded a Project pursuant to a Notice of Award, shall prepare and submit to the Board, General Contractor's construction schedule for the Work, prepared in form and substance acceptable to or as specifically prescribed by the Board. The construction schedule shall not exceed time limits for the Work in the Project Schedule under the Contract Documents. The construction schedule shall accommodate all Board and User activities that are identified in the Contract Documents and shall be updated by General Contractor and submitted to the Construction Manager at least monthly or more frequently as directed by Architect or the Construction Manager. To the extent required by the Contract Documents, the construction schedule shall be related to the entire Project and shall provide for expeditious and practicable execution of the Work. General Contractor shall submit the construction schedule to the Construction Manager in duplicate, and, if requested by the Construction Manager, also in electronic format acceptable to the Construction Manager. General Contractor shall submit a revised construction schedule when General Contractor's planned sequence is changed or when Project changes are made that affect the construction schedule or when directed by the Construction Manager. All construction schedules are subject to review and approval by the Board.
- B. Board's Right to Do Work. If General Contractor neglects to prosecute the Work properly or fails to perform in accordance with the Contract Documents, the Board, after at least three (3) business days' written notice to General Contractor, may without obligation therefor and without prejudice to any other remedy under this Agreement or at law or equity, make good the deficiencies and back charge the General Contractor therefor. If the cost of all Work undertaken by the Board pursuant to this Section exceeds the unpaid balance of the Base Contract Price, General Contractor (and the surety or sureties on the performance bond given by General Contractor) shall be liable for payment to the Board of the amount of the excess.
- C. Board's Right to Stop Work. If General Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, the Board, by written order signed personally or by an agent specifically so empowered by the Board, in writing, may order General Contractor to stop the Work, or any portion of it, until the cause for the order has been eliminated;

however, the right of the Board to stop the Work does not give rise to a duty on the part of the Board to exercise this right for the benefit of General Contractor or any other person or entity.

- D. Contract Documents and Submittals for the Work. General Contractor shall keep one complete set of all Contract Documents, including Drawings, Specifications and one complete set of submittals at the Site in good order, available to the Board, Architect, and Construction Manager. General Contractor shall keep the Drawings, Specifications and submittals up to date by replacing obsolete sheets with revised sheets as they are issued. General Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Board and shall at once report to the Architect any errors, inconsistencies or omissions discovered or which should have been discovered. If General Contractor performs any construction activity which General Contractor knew or should have known involves a recognized error, inconsistency or omission in the Contract Documents without notice to Architect, General Contractor assumes responsibility for the performance and shall bear the costs for correction. General Contractor shall take field measurements and verify field conditions and shall carefully compare the field measurements and conditions and other information known (or which should have been known) to General Contractor with the Contract Documents before commencing activities. General Contractor shall immediately report to Architect errors, inconsistencies or omissions discovered or which should have been discovered.
- E. Time Periods. Notwithstanding anything to the contrary in this Agreement or in the other Contract Documents, all time periods under the Construction Schedule begin to run from the date that General Contractor receives the Notice of Award.

## **28. SUPERVISION OF THE WORK**

- A. Immediately upon issuance of the Notice to Proceed with any portion of the Work, General Contractor shall: (i) furnish a competent staff, sufficient in number, as necessary for the proper administration, coordination, and supervision of the Work within the Project Schedule as established in the Contract Documents, (ii) organize the procurement of all materials and equipment in order that they shall be available at the time they are needed for the Work, and (iii) keep a force of skilled workers on the Site sufficient in number to complete the Work in accordance with all requirements of the Contract Documents and to the satisfaction of Architect.
- B. Before beginning the Work, General Contractor shall select a project manager who shall have full responsibility for the prosecution of the Work with full authority to act in all matters as necessary for the proper coordination, direction, commitment of resources and technical administration of the Work. General Contractor's project manager shall attend meetings at the places and times as the Board, Construction Manager, Program Manager or Architect decides in order to render reports on the progress of the Work. The project manager shall not be



replaced without the consent of the Board, unless the project manager proves to be unsatisfactory to the Board (in which case the project manager shall be replaced on the Project) or becomes unavailable due to reasons beyond the control of General Contractor. In order to replace the project manager, General Contractor shall give the Board written notice and submit for approval the qualifications of the proposed replacement project manager at least fifteen (15) days before the intended change.

- C. Unless otherwise approved, in writing, by the Architect or the Construction Manager with the approval of the Board, General Contractor shall keep on the Project throughout its duration a competent superintendent and any necessary assistants, all of whom shall be satisfactory to the Board. The superintendent shall be present at the Site at all times when General Contractor's personnel and/or Subcontractors are present. The superintendent shall not be replaced without the consent of the Board, unless the superintendent proves to be unsatisfactory to the Board (in which case the superintendent shall be replaced on the Project) or becomes unavailable due to reasons beyond the control of General Contractor. In order to replace the superintendent, General Contractor shall give the Board written notice and submit for approval the qualifications of the proposed replacement superintendent at least fifteen (15) days before the intended change. In the absence of General Contractor's principals, the superintendent represents General Contractor and all directions given to the superintendent are as binding as if given to General Contractor.
- D. General Contractor shall efficiently supervise the Work using its best skill and attention.
- E. General Contractor is solely responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the Work executed under the Contract Documents. General Contractor shall verify the figures shown on the Drawings before laying out the Work and shall be held responsible for any errors or inaccuracies resulting from the failure to do so.

## **29. HOURS OF WORK**

- A. General Contractor shall furnish sufficient forces and work those shifts that may be required to ensure completion of the Work under the conditions and within the time stated in the Contract Documents. If the nature of the Work requires that parts of it be performed outside of regular working hours, the cost of the Work is considered to be included in the Base Contract Price. If the Project falls behind schedule, General Contractor shall be required to perform the Work by extra shifts or on an overtime basis as may be necessary to complete the Work on time and the cost of that shall be considered to be included in the Base Contract Price.
- B. General Contractor shall not be entitled to additional compensation for extra shifts or overtime work for any reason whatsoever, except as otherwise expressly stated in writing by the Board; and then only to the extent of the direct cost of the

premium portion of the time involved and without any charge for mark up, insurance or taxes, except as might otherwise be required by law.

- C. The Site may be occupied during construction. General Contractor shall cooperate fully with the Board and the User during construction operations to minimize conflicts, interference and to facilitate occupant usage and operations. If General Contractor fails to so facilitate occupant usage and operations, the Board may, after written notification to the General Contractor, take reasonable measure to allow such usage and operations and back charge the General Contractor for the cost thereof.
- D. During occupied hours, General Contractor shall limit construction operations to methods and procedures that shall not adversely and unduly affect the environment of occupied spaces, including but not limited to creating noise, dust, odors, air pollution, ambient discomfort, or poor lighting.

**30. EMPLOYEES**

Any employee of General Contractor or a Subcontractor whose work is unsatisfactory or who is considered by the Board, Program Manager, Architect or Construction Manager to be unskilled or otherwise objectionable, shall be dismissed from the Work upon written notice to General Contractor.

**31. BUILDING MATERIALS AND EQUIPMENT**

- A. Unless otherwise specified, all materials and equipment shall be new, and of the quality required to satisfy the standards of the Contract Documents. General Contractor shall, if required, furnish satisfactory evidence as to kind and quality of all materials and equipment. General Contractor shall cause all labor to be performed by workers skilled in their respective trades, and workmanship shall be of good quality so that first class work in accordance with the standards of construction set forth in the Contract Documents shall result.
- B. Any work, materials or equipment that do not conform to these requirements or the standards set forth in the Contract Documents may be disapproved and rejected by the Architect, in which case General Contractor shall, at the General Contractor's sole cost and expense, remove and replace them before final payment.
- C. General Contractor shall keep proper inventories, provide adequate protection against the weather and maintain security measures against theft and vandalism with respect to all stored materials, fixtures and equipment for items stored on-site and not yet incorporated into the Work.
- D. The Site shall not be utilized for the storage of vehicles, materials, equipment, or fixtures not intended for the Project.

- E. General Contractor shall review any specified construction or installation procedures (including those recommended by any product manufacturer). General Contractor shall advise Architect, in writing, seven (7) days before beginning the Work, on items affected: (i) if any specified procedure deviates from good construction practice; (ii) if following any specified procedure shall affect any warranties; or, (iii) of any objections that General Contractor may have to any specified procedure.

**32. SALVAGE RIGHTS**

The Board reserves all salvage rights in existing art works, structures, materials, and artifacts of intrinsic, artistic, or historical value. Whenever General Contractor is required to remove or demolish such things before beginning renovation or other construction, General Contractor shall request the Board's approval in advance and obtain specific direction on handling salvageable items.

**33. TAXES**

- A. General Contractor shall pay all applicable federal, state and local taxes on all materials, labor or services furnished, and all taxes arising out of the operations under the Contract Documents. The taxes include, by way of illustration and not in limitation, Retailers' Occupation, Old Age Benefit, Unemployment, customs, duties, all deductions for income taxes now in force or later enacted before Final Acceptance. General Contractor assumes all liability for the payment of any unemployment benefits payable under any federal or state law to individuals employed by it during the progress of the Work covered by the Contract Documents. This requirement excludes taxes and assessments on real property comprising the Site and Illinois, County and Municipal Retailers' Occupation and Service Occupation Taxes and Illinois Use, Sales and Service Use Taxes on building materials and fixtures to be incorporated into the Work, but does include the taxes on building materials and equipment consumed or used in performing the construction, but not incorporated in it.
- B. The Board is exempt from federal Excise Taxes and exempt from State of Illinois Sales Taxes. Illinois Retailers' Occupation Tax, Use Tax, and Municipal Retailers' Occupation Taxes do not apply to materials or services purchased by the Board by statute. The price or prices quoted in bids and proposals shall exclude all taxes, direct or indirect, that do not apply; shall include those that do apply; and shall comply with all relevant federal laws and regulations.

**34. ROYALTIES AND PATENTS**

- A. The Base Contract Price shall include all fees for any patent, invention, article or arrangement or other appurtenances (collectively "Patent Rights") that may be used upon or in any manner connected with the construction, erection or maintenance of the Work, or any part of it embraced in the Contract Documents. General Contractor and its Subcontractor(s) shall indemnify and hold harmless the

Board, Program Manager, Architect, and Construction Manager and their respective officers, directors, shareholders, members, managers, other officials, agents, and employees from and against all claims, losses and demands for such infringements of Patent Rights.

- B. The approval of any method of construction, invention, appliance, process, article, device or material of any kind by Architect or the Board is only an approval of its adequacy for the Work, and is not an approval of its use by General Contractor in violation of any Patent Right or other rights of any third person.

### **35. TRADE REGULATIONS**

Wherever any provision of any section of the Specifications conflicts with any agreements or regulations of any kind at any time in force among members of any trade associations, unions or councils that regulate or distinguish what work is or is not included in the Work of any particular trade, General Contractor shall make all necessary arrangements to reconcile any such conflict without delay, damage or cost to the Board and without recourse to the Board, Architect, or Construction Manager. If the progress of the Work is affected by any delay in furnishing or installing any items of material or equipment required under the Contract Documents because of a conflict involving any such agreement or regulation, Architect may require that other material or equipment of equal kind and quality be provided at no additional cost to the Board.

### **36. PERMITS, LAWS AND REGULATIONS**

- A. In a timely manner in order to not delay the progress of the Work, General Contractor shall obtain and pay for all permits, licenses and certificates of inspection necessary for the prosecution and completion of the Work. Should any fees for permits, licenses and certificates of inspection be waived by the appropriate governmental agencies, then General Contractor shall give full credit for them to the Board, and the Board may deduct the amount or amounts waived from payments due General Contractor. The credit shall be in the amount stated by the governmental agency waiving the fee.
- B. General Contractor shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the Work. If General Contractor observes or should have observed that the Drawings and Specifications are at variance with them, General Contractor shall, in writing, promptly notify Architect, and any necessary changes shall be made in the Work. General Contractor shall bear all costs and expenses arising from any Work performed that is contrary to those laws, ordinances, codes, rules and regulations.
- C. General Contractor shall comply with the current regulations of the National Board of Fire Underwriters where applicable to the Project, and all other codes named in the Specifications for the various divisions of the Work.

**37. DELAYS AND EXTENSION OF TIME**

- A. If any delay on the part of General Contractor results in any claim against the Board, Architect, Program Manager, Construction Managers, or the agents or employees of any of them (for purposes of this Section, individually and collectively, the "Board Indemnitees") by another contractor or subcontractor arising out of the delay, General Contractor shall defend, indemnify, and hold the Board Indemnitees harmless from and against any and all such claims. The Board may, without prejudice to its right to any other remedy under this Agreement or at law or equity, deduct the amount of any recovery against Board Indemnitees from any monies due or that may become due General Contractor.
- B. If General Contractor or its Subcontractors are delayed at any time in the progress of the Work, General Contractor's (and its Subcontractors') sole remedy shall be an extension of the time for completing the Work for that reasonable period of time that Architect and the Board may decide, but only if the delay is caused by: (i) any act or omission whatsoever (including without limitation suspensions of the Work for any reason and delays pending a decision) of the Board, Architect, Program Manager, Construction Manager, or the agents or employees of any of them, (ii) any other contractor employed by the Board, (iii) changes ordered in the Work, (iv) strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties, or any other causes beyond General Contractor's control that would not reasonably be expected to occur in connection with or during performance of the Work (except for weather delays caused by typical Chicago weather extremes that General Contractor should have anticipated in General Contractor's schedule for the Work), or (v) delay in obtaining required permits where the delay was not caused in whole or in part by General Contractor.
- C. No claim for an extension of time shall be considered unless General Contractor makes it in writing, specifying the reason for the delay, and submits it to Construction Manager within seven (7) days after the delay begins. In case of a continuing cause of delay, only one claim is necessary.
- D. General Contractor and its Subcontractors are not entitled to any damages or compensation, or to be reimbursed, by the Board for any losses on account of any delay or delays resulting from any cause whatsoever.
- E. If General Contractor fails to complete a Project within the time provided by the Contract Documents and such failure is not a result of any of the matters delineated in Section 36.B above, then, at the option of the Board, and in addition to all other rights and remedies under this Agreement or at law or equity, General Contractor agrees to pay the Board the sum of One Thousand and 00/100 Dollars (\$1,000.00) per day as liquidated damages (and not as a penalty) for each day of such delay in order to compensate the Board for its administrative costs relating to such delay (the General Contractor recognizes and agrees that the amount of such administrative costs are difficult, if not impossible, to prove). The Board may, without prejudice to its rights or remedies under this Agreement or at law or

equity, deduct said sum from any monies due or that may become due General Contractor.

### **38. CLAIMS AND DISPUTES**

- A. General Contractor shall present all disputes arising under this Agreement or the Contract Documents, whether involving law or fact (or both) or extra Work, and all claims for alleged breach of contract within ten (10) days after the dispute or the breach begins, by notice, in writing, to the Board's Chief Purchasing Officer, with copies to Program Manager, Chief Operating Officer and Construction Manager. For purposes of this Section, disputes and claims, liquidated or otherwise, shall be referred to as "claims." All papers pertaining to claims shall be filed in quadruplicate with the Chief Purchasing Officer, with one additional copy each to Chief Operating Officer, Program Manager and Construction Manager.
- B. The notice shall detail the amount (if any) of the claim (if the Work that is the subject of the claim has been completed) and shall in any event state the facts surrounding the claim in sufficient detail to identify it, together with its character and scope. In the meantime, and regardless of the outcome and resolution of the claim, during the pendency of the dispute General Contractor shall proceed with the Work as directed and maintain the construction schedule. The Chief Purchasing Officer or designee shall render a determination in writing and any factual findings that are part of the written determination are binding on both the Board and General Contractor.
- C. Any claim not presented within the time limit specified in this Section shall be considered to have been waived.
- D. If, at the time notice is required to be given under this Section, the amount of a claim is not known, General Contractor shall, within ten (10) days after the Work is completed, submit in detail its claim and proof of claim.
- E. No action for the recovery of any claim is sustainable in any court of law or equity unless General Contractor begins it within either (i) twelve (12) months following the date the Board formally denies the claim, or (ii) ninety (90) days after Preliminary Acceptance of the Work, whichever is the earlier.

### **39. RELATIONS OF GENERAL CONTRACTOR AND SUBCONTRACTORS**

- A. Nothing in this Section creates any obligation on the part of the Board to pay or to cause payment of any sums to any Subcontractor.
- B. General Contractor shall cause each Subcontractor to agree, in writing, that the Subcontractor: (i) is bound to General Contractor by the terms of the Contract Documents and assumes toward General Contractor all the obligations and responsibilities that General Contractor, by the Contract Documents, assumes toward the Board; (ii) shall submit to General Contractor applications for payment

in such reasonable time as to enable General Contractor to apply for payment as specified in the Contract Documents; (iii) shall make any claims for extras and for extensions of time to General Contractor in the manner provided herein for like claims by General Contractor upon the Board, except that the time limit for making claims for extra cost is seven (7) days.

- C. General Contractor: (i) is bound to Subcontractor by all the obligations that the Board assumes to General Contractor under the Contract Documents and by all the provisions of the Contract Documents affording remedies and redress to General Contractor from the Board; (ii) shall pay Subcontractor, upon the issuance of certificates specified in Contract Documents, the amount allowed and paid to General Contractor on account of Subcontractor's Work to the extent of Subcontractor's interest in it; (iii) acknowledges that no claim for services rendered or materials furnished by General Contractor to Subcontractor is valid unless written notice of it is given by General Contractor to Subcontractor during the first ten (10) days of the calendar month following that in which the claim originated; and (iv) shall give Subcontractor an opportunity to be present and to submit evidence in any decision involving its rights.

#### **40. RELATIONS WITH OTHER CONTRACTORS**

- A. The Board reserves the right to let other contracts in connection with the Work, including, but not limited to, contracts for performing environmental remediation and abatement. General Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and for the execution of their work and shall properly connect and coordinate its Work with theirs. If any part of General Contractor's Work depends for proper execution or result upon the work of any other contractor, General Contractor shall inspect and measure the work of the other contractor and promptly report to Architect any defects or discrepancies in such work. General Contractor's failure to inspect and make the report constitutes an acceptance of the other contractor's work as fit and proper for the proper execution of the Work, except as to latent defects.
- B. General Contractor shall work in harmony with and assist any other contractor that may be engaged by the Board to perform work at the Site whenever necessary or as so directed by the Board. In no case is General Contractor permitted to exclude from the Site any other contractor in the execution or installation of its work. In the event of a conflict in scheduling the respective portions of General Contractor's Work and that of any other contractor, General Contractor shall immediately refer the matter to the Board's Construction Manager for resolution. The resolution, and any accommodation required of General Contractor in connection with it, are not grounds for a delay claim under the Contract Documents. Wherever work being done by any such contractors or subcontractors is contiguous to Work covered by the Contract Documents, the respective rights of the parties shall be established by Architect to secure the completion of the various portions of the Work in general harmony.

#### 41. CHANGES IN THE WORK

- A. The Board may make changes, alternatives, additions and/or deductions in the Work without invalidating the Contract Documents and without releasing or relieving General Contractor from any guarantee given pursuant to the Contract Documents and without affecting the validity of General Contractor's warranty or Performance and Payment Bond (and without relieving or releasing the surety or sureties of the bond). All such Work shall be executed under the conditions of the original Contract Documents. The General Contractor agrees to respond with General Contractor's proposal to all bulletins issued by the Board within two (2) weeks of the issuance of such bulletin.
- B. All Change Orders require approval or ratification by the Board in accordance with Board rules. No Change Orders shall be authorized that exceed, individually or cumulatively, ten percent (10%) of the Base Contract Price.
- C. Except in an emergency endangering life or property, General Contractor shall make no change without receipt of a Change Order, approved on its face by the Board; and no claim for an adjustment of the Base Contract Price or time of performance shall be valid unless so ordered in writing.
- D. General Contractor, when ordered, in writing, by the Construction Manager, with approval by the Board, shall proceed promptly in accordance with the Change Order. After receipt of General Contractor's proposal for a change in the Work, if the parties can agree on an equitable lump sum adjustment of the Base Contract Price, a Change Order shall be issued establishing the adjustment. The adjustment of the Base Contract Price on account of a Change Order shall be determined by one of the following methods:
  - 1) Method 1 - Unit Price Adjustment. Where the change in the Work involves items for which agreed-upon unit prices have been established and where the net aggregate quantity of the items is in excess of the requirements in the Contract Documents, payment for the items shall be at the established unit prices.

When the net aggregate quantity is less than the requirements in the Contract Documents, a Change Order shall be issued for a credit equal to the sum of (i) the product derived by multiplying the established unit price times the net decrease in units, and (ii) an amount equal to ten percent (10%) of the product.

Where the "agreed-upon unit price" is a unit price bid on estimated quantities, then the Board may, at its option, demand a readjustment of the "agreed-upon unit price" in any case where the requirements for the particular unit price item exceeds one-hundred twenty five percent (125%) of the estimated quantity bid.



- 2) Method 2- Lump Sum Not to Exceed Adjustment. Where the change in the Work involves items for which agreed-upon unit prices have not been established, General Contractor's proposal shall be based upon a detailed estimated fair cost of General Contractor's labor hours, material quantities, and equipment type and duration. In submitting the proposal, General Contractor shall use its ability and buying power to obtain the best possible prices from suppliers of material and equipment and from Subcontractors consistent with its general responsibility for the performance and completion of the Work. General Contractor shall submit, as backup documentation, a detailed breakdown of labor, material and equipment with the proposal, all to the satisfaction of the Board. To this end, General Contractor, when submitting such a proposal, is considered to have represented to the Board by the submittal that it has used the lowest prices obtained or obtainable from suppliers of material and equipment and from Subcontractors and that nothing has been added to the prices unless indicated in the proposal or billing. The Board has the option to obtain independent quotes from other contractors/suppliers and direct the General Contractor to use those contractors/suppliers to carry out the Work involved in the Change Order.

Should General Contractor, at any time, without disclosing the fact, add or charge excessive amounts to a bill or proposal of any supplier of labor, material or equipment or to a bill or proposal of any Subcontractor, and should the Board act on the same or make payment on any Work covered by such proposal or billing, then, and in that event, the Board has the right to recover from General Contractor any such amounts as may have been so added and not disclosed. The recovery may be made by deducting the undisclosed additions from any payments due General Contractor, or by any and all other means available to the Board.

General Contractor's proposal of cost for items of Work not covered by agreed-upon unit prices for additional Work ordered may include a charge for overhead and profit, together, of twelve percent (12%), to the extent that General Contractor performs the items of Work with General Contractor's own forces. For deleted Work, the price shall be net cost (office and field overhead, insurance and bond premiums, for example, are not considered or allowed to be included in "net cost."). Where the items of Work involved in the change are performed by Subcontractors, their cost shall be similarly established, to which cost, as approved by Construction Manager, such Subcontractors may add a charge for overhead and profit, together, of fifteen percent (15%). To this total, only six percent (6%) may be added to cover both overhead and profit for General Contractor. If more than one level of Subcontractor is involved, the Subcontractor performing the Work may add to cost a charge for overhead and profit, together, of fifteen percent (15%), and each other Subcontractor involved and General Contractor may add only six percent (6%) to cover both overhead and profit. For deductive changes, the costs

are net, regardless of whether or not General Contractor or Subcontractor performs the Work.

The overhead and profit charges referred to above constitute full reimbursement for all costs of supervision, engineering, field and main office expense, vacation, association dues, use of small tools, bond, insurance, incidental job burdens, mobilization, demobilization, travel to and from the job site, and delivery of small parts and tools.

- 3) Method 3 - Cost-Plus Fee Adjustment. Where the change in the Work involves items, in whole or in part, for which a unit price determination cannot be made under Method 1 or 2, and where the parties are unable to determine and agree upon an equitable lump sum adjustment of the Base Contract Price for the items, a proceed order shall be issued, and General Contractor shall proceed with the Work in question on a cost-plus fee basis. Cost means General Contractor's actual cost of labor, material, equipment, and insurance, as approved by the Board. General Contractor shall submit, as supporting documentation, daily reports of the extra work, signed by the Construction Manager, showing labor along with copies of invoices for materials, equipment, dumpster boxes, fees, and other such costs and expenses. General Contractor may add overhead and profit as defined under Method 2 above.

Before the General Contractor proceeds with any Work under Method 3, the Board must agree, in writing, to the maximum sum to be paid to the General Contractor under Method 3.

Upon completion of the change and determination of its cost-plus fee price, a Change Order shall be issued establishing the adjustment of the Base Contract Price.

- 4) General Contractor's agreement to a Change Order constitutes a waiver and release by General Contractor and its Subcontractors and suppliers for any claim for delay, cumulative impact, cost of extended general conditions, and any other indirect cost associated with the changes.

## **42. PAYMENT PROCEDURES**

- A. With respect to rehabilitation and renovation Projects, no payments are authorized or shall be made for stored material. Payments shall be made only for material incorporated into the Work. With respect to new construction, payments for stored material shall be made only if the Board specifically approves them, at its sole discretion. If the Board authorizes payment to be made on account of materials and equipment not incorporated in the Work, but delivered and suitably stored at the Site, or at some other location agreed upon in writing, General Contractor is entitled to the payments only if General Contractor submits appropriate bills of sale, waivers of lien, and other documents (such as, but not

limited to completed UCC filings) the Board may require to establish its title to them and otherwise protect its interests, and complies with such other procedures as the Board requires, including, but not limited to, those related to insurance and transportation to the Site, inspection and inventory of the materials or equipment.

- B. If General Contractor has complied with the requirements, Architect shall issue General Contractor a certificate for the amount which Architect determines to be properly due as agreed upon during the payment review meeting (including materials that are suitably stored, but not incorporated in the Work at no more than eighty percent (80%) of their actual value), during the preceding payment period. The amount of each partial payment is the total sum of completed Work less prior partial payments, retainage and payments withheld.
- C. Retainage of ten percent (10%) of the contract amount (including the value of change orders) shall be withheld from partial payments to General Contractor until the Work is fifty percent (50%) complete. Upon 50% completion of the Work, in accordance with performance measures as set forth in this Agreement, the retainage will be reduced to five percent (5%) of the Contract Amount as set forth above, and the 5% shall be released to General Contractor.

Upon Final Acceptance of the Work, the remaining 5% retainage shall be released to General Contractor. General Contractor must pay all retainage owed to each Subcontractor for satisfactory completion of such Subcontractor's accepted work within ten (10) days after any portion of the retainage is released by the Board to the General Contractor.

- D. No certificate issued nor payment to General Contractor, nor partial or entire use of the Work or occupancy of the Site by the Board or the User is an acceptance of any Work or materials not in accordance with the Contract Documents.
- E. Architect's certificates for payment are for the benefit of the Board and shall not be relied upon by any other party (including any surety or Subcontractor of General Contractor) in any action against the Board, Architect or anyone acting on behalf of either of them.
- F. Architect, Program Manager and Construction Manager may recommend that the Board withhold or nullify the whole or a part of any application for payment or any certificate for payment to the extent as may be necessary to protect the Board from loss because of: (i) defective Work not remedied; (ii) claims filed or reasonable evidence indicating probable filing of claims; (iii) failure of General Contractor to properly pay Subcontractors or for material, services, or labor; (iv) a reasonable doubt that the Contract Documents can be completed for the balance then unpaid; (v) damage to the Work or property of the Board, the User or another contractor; (vi) erroneous estimates by General Contractor of the value of the Work performed; (vii) delinquent reports not remedied, including, but not limited to, monthly MBE/WBE utilization reports and certified payroll; (viii) unauthorized deviations by General Contractor from the Contract Documents; and

(ix) liquidated damages. When the foregoing ground or grounds are removed, payments shall be made for amounts so withheld.

**43. LIENS**

- A. Whenever the Board receives notice, in writing, of a lien or claim of money due to any Subcontractor, worker, or employee of General Contractor for work performed or for materials or equipment furnished and used in or about the Work, the Board shall advise General Contractor, in writing, and General Contractor shall have ten (10) business days in which to discharge, or (if permitted by law) bond over the lien or claim, or, if General Contractor contests the claim, to notify the Board, in writing, to that effect, along with a statement of the reasons for contesting it. In any event, the Board shall comply with the requirements of the law with respect to withholding General Contractor's funds pursuant to lien notices and reserves all of its rights in connection with such claims of lien.
- B. If the Board is made a party to any action in connection with a claim or claim of lien, including claims for extras, General Contractor shall, upon tender by the Board, indemnify, defend and hold the Board harmless from and against the claim, and any costs, damages, and expenses, including, without limitation, attorneys' fees and court costs, in connection therewith.
- C. If General Contractor fails to timely discharge, bond over (if permitted by law), or notify the Board that it contests the claim of lien, the Board reserves the right, at its option, to direct that the amount of the claim be paid directly to the claimant and deducted from the amount due to General Contractor under the Contract Documents, without liability for wrongful withholding from or for nonpayment to General Contractor. This provision is solely for the benefit of the Board, and does not require the Board to determine or adjust any claims or disputes between General Contractor and its Subcontractors, workers, or employees, or to withhold any money for their protection, unless the Board elects to do so. This provision does not confer any rights for the benefit of Subcontractors, workers or employees, nor does it enlarge or alter the application or effect of existing lien laws.

**44. ACCEPTANCE OF THE WORK**

- A. Preliminary Acceptance. Preliminary Acceptance of the Work shall be made after preliminary inspection by Architect when, in the opinion of Architect and Construction Manager, the requirements of the Contract Documents have been essentially completed, including a Certificate of Occupancy, except for Punch List Work (including any cleaning, waste or trash or debris disposal required under the Contract Documents).
- B. The Punch List. **Time is of the essence** in closing out the Work of each Project. General Contractor shall begin Punch List Work immediately after receipt of the Punch List. Failure of General Contractor or its Subcontractors to begin the

Punch List Work within three (3) business days after receipt of the Punch List shall be considered a failure to prosecute the Work of the Contract Documents. General Contractor shall continuously prosecute Punch List Work once begun and complete it within thirty (30) days from the receipt of the Punch List from Architect.

- C. Final Acceptance. General Contractor shall notify the Board, Architect and Construction Manager that the Work is ready for final inspection on a definite date by which time all requirements of the Contract Documents shall have been completed. The notice shall be given at least five (5) days before the date stated for final inspection. If the Board, Architect and Construction Manager determine that the status of the Work is as represented, they shall make the arrangements necessary to have final inspection begun on the date stated in the notice, or as nearly after it as is practicable. If all requirements of the Contract Documents have been completed at the time of final inspection by the Board and Architect, the Work shall be finally accepted and a final certificate shall be issued by Architect. Upon Final Acceptance, the Board may take over the Project for occupancy and use.
- D. Non-Conforming Work. No action of the Board, Program Manager, or Construction Manager, or their respective board members, officers, employees, officials, or agents shall be considered as accepting Work done or material furnished in the performance of the Contract Documents that are not in accordance with those specified and required by the Contract Documents. The payment of the final certificate in no way affects the rights of the Board against General Contractor (and the surety or sureties on the Performance and Payment Bond given by General Contractor) to enforce the complete performance of the Contract Documents or to sue for the recovery of damages for failure to do so, nor does it affect the terms of General Contractor's warranty in connection with the Contract Documents.

## 45. INSPECTION OF WORK

- A. The Board, Architect, Program Manager, and Construction Manager are entitled at all times to have access to the Work wherever it is in process. General Contractor shall provide proper and safe facilities for access and inspection.
- B. If the Specifications, Architect's instructions, laws, ordinances or any public authority require any Work to be specifically tested or approved, General Contractor shall give Architect, Program Manager, and Construction Manager not less than three (3) business days written notice of the Work's readiness for inspection. If the inspection is made by an authority other than Architect, General Contractor shall inform Architect, Program Manager, and Construction Manager of the date fixed for the inspection. Required certificates of inspection shall be secured by General Contractor. Inspections by Architect shall be promptly made, and where practicable, at the source of supply. When the tests and inspections indicate noncompliance of the Work with requirements of the Contract

Documents, and Architect's services are required for additional reviews or inspections of the Work, the Base Contract Price may be decreased by a Change Order in the amount of Architect's invoice (approved by the Board) as compensation for Architect's additional services.

- C. Any Work covered up without approval or consent of Architect shall be uncovered for examination, if required by Architect, and shall be replaced and/or re-covered, all at General Contractor's sole cost and expense. Examination of Work previously covered up with the approval or consent of Architect may be ordered by Architect to be uncovered, and if so ordered, the Work shall be uncovered by General Contractor. If the Work is found to be in accordance with the Contract Documents, the Board shall reimburse General Contractor for the reasonable cost and expenses of uncovering and re-covering. The reimbursement shall be for actual costs incurred plus the percentages allowed by the Contract Documents. If the Work is not found to be in accordance with the Contract Documents, General Contractor shall pay all costs and expenses of uncovering, replacement and re-covering.
- D. General Contractor shall place its field engineering force at Architect's disposal for field checking during any inspection period. When layouts of the Work are to be made, General Contractor shall notify Architect in sufficient time in order that Architect may be present.
- E. Neither the presence nor the absence of Architect at the Site relieves General Contractor from responsibility for compliance with the provisions of the Contract Documents, nor from responsibility for the removal and replacement of Work not in accordance with the Contract Documents.
- F. Architect is not authorized to make any changes or modifications in the Contract Documents, to direct additional work not required by them, nor to waive the performance by General Contractor of any requirements of the Contract Documents except as provided herein.

## **46. USE OF COMPLETED PORTIONS OF THE WORK**

- A. After Substantial Completion of the Work in any space or spaces in a Project, the Board has the right to use and occupy the space or spaces in advance of completion and Final Acceptance, but the Board's occupancy and use of the spaces shall not unduly interfere with General Contractor's operations nor delay completion of the Work. Occupancy and use of any space or spaces in the building by the Board or User shall not constitute Preliminary Acceptance in the absence of written notification of Preliminary Acceptance of the affected portion of the Work from Architect.
- B. With respect to new construction, if the Board desires to exercise the right of partial occupancy before completion and Final Acceptance as provided above, General Contractor shall cooperate with the Board in making available for the

Board's use the services such as heating, ventilating, cooling, water, lighting and telephone for the space or spaces to be occupied. If the equipment required to furnish the services is not entirely completed at the time the Board desires to occupy the space or spaces, General Contractor shall make every reasonable effort to complete them as soon as possible to the extent that the necessary equipment can be put into operation and use. With respect to the rehabilitation of existing facilities, the Board shall cooperate with General Contractor in making available for General Contractor's use reasonable amounts of water, lighting, heating, and electricity necessary for General Contractor to perform its Work.

- C. During the partial occupancy before Final Acceptance, arrangements shall be made between the Board and General Contractor regarding the operation and cost of the necessary heating, ventilating, cooling, water, lighting and telephone services. The Board shall assume responsibility for the operation of the equipment and utilities required to provide the above services, in part or in total, and General Contractor shall make arrangements acceptable to the Board as to the warranties affecting all Work associated with the areas so occupied.
- D. The Board's occupancy or use of the space or spaces in a Project does not constitute the Board's acceptance of any Work, materials or equipment that are not in accordance with the requirements of the Contract Documents, nor relieve General Contractor from its obligations or responsibilities under the Contract Documents.
- E. In any case, when the Board takes over space for occupancy or use, the Board shall give General Contractor notice in writing of taking over the space or spaces involved.

#### **47. WASTE AND DEBRIS**

- A. General Contractor shall reduce, reuse, salvage and recycle construction and demolition debris to the greatest extent practicable. General Contractor shall comply with all laws, ordinances, codes, rules and regulations relative to waste management.
- B. General Contractor shall conduct and complete the Work in a neat, clean, and workmanlike manner. General Contractor shall, at its own cost and expense, furnish dumpsters for regular and frequent collection of construction debris, waste, and other refuse that accumulates at the Site and cause its frequent removal and lawful disposal. General Contractor shall maintain access to school refuse and recycling dumpsters at all times. General Contractor shall police the Site and adjacent areas (including, but not limited to, public streets) regularly and frequently, removing and disposing of construction debris, waste, and refuse promptly. Where the Site is unoccupied throughout the entire construction period, at the completion of the Work, General Contractor shall cause the Site to be cleaned of all construction debris, waste, and refuse and left in broom-clean condition, all equipment, walls, floors and furnishings to be left clean and free of

construction-related dirt, grime, splatters, and dust and the whole left in ready-to-use condition for the Users. The Board reserves the right to request a copy of the General Contractor's waste management plan during Work.

- C. Where the Site is occupied, or partially occupied, during any part of General Contractor's Work, or where a portion of the Work, on completion, is given over to the Users, General Contractor shall, at its own cost and expense, at least daily, but as often as necessary to avoid creating hazards to Users or attracting vermin, remove and lawfully dispose of its debris, waste, and other refuse, sweep all User-occupied areas free of construction materials and dirt or dust, and wipe down all equipment and furnishings in the area where the Work is or was taking place so that they are left in a neat, clean and workmanlike condition for the Users. At the completion of the Work, General Contractor shall again leave the Site in a neat, clean and workmanlike condition.
- D. If, after written notification from the Board of the failure to so keep the Site in a neat, clean and workmanlike condition, the Board may, without further notice to the General Contractor, clean and maintain the Site and back charge the General Contractor for all costs and expenses in connection therewith.

**48. CORRECTION OF WORK BEFORE FINAL PAYMENT**

- A. General Contractor shall promptly remove all materials and equipment from the Site, whether incorporated in the Work or not, rejected by Architect or Construction Manager as failing to conform to the Contract Documents (collectively referred to as "rejected Work"). General Contractor shall promptly replace and re-execute the rejected Work in accordance with the Contract Documents and without expense to the Board and shall bear the cost and expense of making good all work of other contractors destroyed or damaged by the removal or replacement.
- B. If General Contractor does not remove the rejected Work within a reasonable time, determined by written notice of Construction Manager, the Board may, at the sole cost and expense of General Contractor, remove and dispose of the rejected Work as the Board sees fit. If General Contractor does not pay the cost and expenses of the removal within ten (10) days after removal of the rejected Work by the Board, the Board may deduct all such costs and expenses from any monies due General Contractor.
- C. If the Work deviates from the requirements of the Contract Documents, General Contractor shall be liable for all resulting damages. General Contractor waives any claim (as a defense or a claim to reduce General Contractor's liability) that performing the Work without deviation from what is required by the Contract Documents would also have caused or resulted in damages. This provision does not limit any other rights of the Board or Architect or other obligations of General Contractor.



- D. When Architect's additional services are required because of defective Work, neglect, failure, deficiencies, or default by General Contractor, Architect's compensation for the services may, at the option of the Board, be payable by General Contractor based on Architect's invoice sent to the Board. Deficiencies are defined to include, but not be limited to, more than two (2) reviews of the same submittal of shop drawings and associated data due to incomplete, uncoordinated or otherwise defective submissions. The invoice, when approved by the Board, along with other costs, damages, and liabilities incurred by the Board and Architect, at the option of the Board, may be the basis for decreasing the Base Contract Price by a Change Order to compensate the Board for Architect's additional services.

**49. CORRECTION OF WORK AFTER FINAL PAYMENT**

The final certificate, final payment, or any provision in the Contract Documents does not relieve General Contractor of responsibility for faulty materials, equipment or workmanship. Unless otherwise specified, General Contractor shall remedy any defects due to faulty materials, equipment or workmanship and pay for any damage to other Work resulting therefrom that appear within the warranty period. The Board shall give written notice of the defects with reasonable promptness after they are discovered. All questions arising under this Article shall be decided by the Board.

**50. LIQUIDATED DAMAGES; OFFSET**

- A. All liquidated damages that accrue under the Contract Documents, including those that may apply for late completion of Work, for failing to meet the MBE/WBE bid goals, and for failing to meet Chicago Residency requirements of the Contract Documents, shall be deducted before final payment is made for the Work.
- B. All back charges to General Contractor, refunds from General Contractor, and other offsets against any amounts due General Contractor permitted or required under the Contract Documents may be taken at any time from amounts due to General Contractor under the Contract Documents once the Board has determined the amount of the back charge, refund, or offset to be made.

**51. ASSIGNMENT**

- A. General Contractor shall not assign this Agreement or the Contract Documents or sublet it, in whole or in part, without the written consent of the Board, nor shall General Contractor assign any moneys due or to become due to it under the Contract Documents without the previous written consent of the Board.
- B. Any assignment of monies due under the Contract Documents made without the written consent of the Board is void and the assignee in that case acquires no rights against the Board.

## 52. GENERAL CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE

Contract. If the Work is stopped under an order of any court or other public authority for a period of one-hundred eighty (180) days or more through no act or fault of General Contractor or of anyone employed by General Contractor, then General Contractor may, upon seven (7) days written notice to the Board, stop Work on the Project and terminate the specific Project Contract Documents.

## 53. DEFAULT AND TERMINATION

A. Events of Default. It is a default under this Agreement and the Contract Documents if General Contractor:

- 1) becomes insolvent or bankrupt; or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of insolvency;
- 2) fails to begin the Work on a Project at the time specified;
- 3) fails to perform in accordance with the Contract Documents, if not cured within any applicable cure period;
- 4) fails to perform the Work on a Project with sufficient workers, equipment or materials to ensure the completion of the Work or any part of the Work within the time specified by the Contract Documents;
- 5) persistently or repeatedly refuses or fails to supply an adequate number of skilled workers or supply of proper materials;
- 6) discontinues prosecution of Work on any Project;
- 7) fails to remove rejected Work, or repair or replace rejected Work on a Project, if not cured within any applicable time period;
- 8) fails to make prompt payment to Subcontractors or for material or labor on any Project;
- 9) fails to prosecute the Work on a Project in a manner acceptable to the Board, if not cured within any applicable cure period;
- 10) persistently disregards laws, ordinances or instructions of the Board, Program Manager, Architect, or Construction Manager;
- 11) fails to complete Punch List items or close-out documents; or
- 12) is otherwise guilty of a material breach of any provision of this Agreement or the Contract Documents.

B. Remedies. In the event of a default by General Contractor, the Board may, without prejudice to any other right or remedy and after giving General

Contractor (and the surety or sureties on the Performance Bond given by General Contractor) seven (7) days written notice, terminate this Agreement and the Contract Documents for a specific Project or all Projects, or terminate only the Contract Documents for a specific Project. The Board shall then have the following rights (any or all of which may be exercised by the Board in its sole discretion): (1) to take possession of all Sites and of all materials, tools and appliances thereon; (2) to take (in the manner and to the extent desired by the Board) an assignment of General Contractor's subcontracts and material orders for any Project; (3) to deem General Contractor non-responsible for future contracts to be awarded by the Board; and (4) finish the Work on a Project by whatever method the Board considers expedient. General Contractor shall not be entitled to receive any further payment. If the expense of finishing the Work on any Project, including compensation for additional managerial and administrative services, exceeds the unpaid balance of the Base Contract Price, General Contractor (and the surety or sureties on the performance bond) are liable for and shall pay the amount of the excess to the Board. Construction Manager shall be responsible for certifying the expense incurred by the Board as provided in this Section and the damage incurred as a result of General Contractor's default.

- C. Termination For Convenience. The Board reserves the right, for its convenience, to terminate the Work of General Contractor on any Project or to terminate this Agreement by written notice stating the effective date of the termination. In that case, General Contractor and its Subcontractors shall (except for services necessary for the orderly termination of the Work):
- 1) stop all Work on any Project so terminated ;
  - 2) place no further order or subcontracts for materials, services, equipment or supplies on such Project;
  - 3) assign to the Board (in the manner and to the extent directed) all of the rights of the subcontracts relating to the Work on such Project;
  - 4) take any action necessary to protect property of the Board and property in General Contractor's possession in which the Board has, or may acquire, an interest; and
  - 5) take any other action toward termination of the Work on such Project that the Board may direct. Thereafter, the Board shall pay General Contractor, subject to the limitations set forth herein, the proportion of the Base Contract Price of a Project that the Work actually performed (including materials delivered to the Site) at the date of termination bears to the entire Work to be performed. No payments shall be made for Work not actually performed, and no payment shall be made or due for lost profits for portions of the Work not actually performed.

- D. Suspending the Work. The Board reserves the right to suspend the Work on a Project, wholly or in part, by written stop order for such period as is necessary for the protection of the Board's interest. The stop order remains in effect until released by the Board in writing. The Board does not assume any liability for damages or loss of anticipated profits resulting from the stoppage of Work, but it may grant General Contractor an extension of time commensurate with the period of actual delay in completion of Work, if the stop order was not necessitated by the acts, failure to act or negligence of General Contractor. General Contractor shall take all means and precautions as may be required to properly protect the finished and partially finished Work during the period or periods of the stop order.

**54. NOTICES SECTION**

- A. All notices required to be given under this Agreement shall be either hand-delivered, by courier, or sent by United States mail, postage prepaid, or sent by facsimile (with evidence thereof), to the addresses and facsimile numbers as follows:

If to the Board:

Board of Trustees of Community College District #508  
226 W. Jackson Blvd, 14<sup>th</sup>  
Chicago, Illinois 60606  
Attn: Cheryl Hyman, Chancellor

With a copy to:

Board of Trustees of Community College District #508  
226 W. Jackson Blvd, 14th  
Chicago, Illinois 60606  
Attn: Eugene L. Munin, General Counsel  
Fax: (312) 553-2539

If to General Contractor:

Construx, LLC  
2300 W. Diversey Ave.  
Chicago, IL 60647  
Attn: Hector Castillo  
Telephone: (312) 217-2228  
Fax: (773) 598-4780

- B. Notices are considered to be given on the date of delivery, if delivered by hand or courier or facsimile, and on the second business day after mailing, if given by mail. The Board or General Contractor may, from time to time, change the address(es) and facsimile number to which notices are to be given by notifying the other party in writing.

## **55. MISCELLANEOUS PROVISIONS**

- A. Debarment Policy. General Contractor acknowledges that, in performing Work for the Board, General Contractor shall not utilize any firms that have been debarred from doing business with the Board under the Board's Debarment Policy. If General Contractor has engaged any firm to work on a Board Project that is later debarred, General Contractor shall sever its relationship with that firm with respect to Board work.
- B. Recycled Content. General Contractor shall give preference to the use of recycled products in the performance of any Work in accordance with applicable Environmental Protection Agency guidelines as promulgated in 40 CFR Part 247.
- C. Governing Law. Illinois law governs this Agreement and the Contract Documents, its interpretation, and the Work performed pursuant to the Contract Documents. General Contractor submits itself irrevocably to the jurisdiction of the courts located in Cook County, Illinois and, if General Contractor chooses to bring any action against the Board, it shall do so only in those courts.
- D. Inspector General. Under the provisions of 105 ILCS 5/34-13.1, the Inspector General of the Chicago Board of Education has the authority to conduct certain investigations. General Contractor shall give the Inspector General access to all information and personnel necessary to conduct its investigations.

- E. Conflicts of Interest. This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3, which restricts the employment of, or the letting of contracts to, former Board members during the one (1) year period following expiration or other termination of their terms of office.
- F. Contingent Liability. Expenditures not appropriated in the current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in later fiscal year budgets. If sufficient funds are not appropriated in any fiscal year for performance under this Agreement or any Contract Documents, the Board shall notify General Contractor and this Agreement and any Contract Documents shall terminate on the last day of the fiscal period for which funds were appropriated or when appropriated funds are exhausted, whichever occurs first. The Board shall not be liable to General Contractor under any circumstances for any amount in excess of the current appropriated amount.
- G. Audit, Inspection, and Retention of Documents. General Contractor and its Subcontractors shall furnish the Board with such information as the Board requests regarding the progress, execution, and costs of Work. For five (5) years after General Contractor receives its final payment in connection with the Project, General Contractor and its Subcontractors shall maintain records on a Project-by-Project basis, showing payroll details, actual time spent on each Project, utilization of Subcontractors, costs incurred and Work performed. General Contractor and its Subcontractors shall permit authorized representatives of the Board to inspect, copy, and audit all data and records for the Work. All agreements with Subcontractors of General Contractor shall provide for a similar right of audit, copying, and inspection by the Board's authorized representatives. No provision in this Agreement granting the Board a right of access to records and documents is intended to impair, limit, or affect any right of access to such records and documents that the Board would have had in the absence of such provisions.
- H. Favored Nation. With respect to any services or Work that is not bid, or any portion thereof, such as but not limited to negotiated Change Orders, General Contractor shall furnish the Work to the Board at the lowest price that General Contractor charges to other similarly situated parties for comparable work. If General Contractor overcharges, in addition to all other remedies, the Board shall: (a) be entitled to a refund in the amount of the overcharge, plus interest at the rate of one percent (1%) per month on the amount of the overcharge from the date the overcharge was paid by the Board until the date refund is made; (b) have the right to offset any overcharge against any amounts due to General Contractor under this or any other contract between General Contractor; and (c) at the Board's sole option, have the right to declare General Contractor in default under this Agreement.
- I. Confidentiality. General Contractor shall abide by the confidentiality provisions below and shall cause its subcontractors to undertake the same obligations of

confidentiality. These provisions regarding confidentiality shall survive the expiration or other termination of this Agreement.

- 1) Confidential Information. All reports, plans, Specifications, information, or data prepared or assembled by General Contractor and its subcontractors under this Agreement are confidential. In addition, the Board may disclose certain confidential information to General Contractor or General Contractor may have access to certain confidential information that is not generally known to others, such as trade secrets, or is required to be kept confidential by law, such as confidential student information.
  - 2) Non-Disclosure. General Contractor shall not make any confidential records or information available, nor use or disclose any such confidential information, to any third party without the prior written approval of the Board or except as directed by the Board, in writing. General Contractor shall not issue publicity news releases or grant press interviews, or, except as may be required by law during or after the performance of this Agreement, disseminate any information regarding this Agreement or the Work General Contractor performs on Board Projects without the prior written consent of the Board.
  - 3) Subpoenas. If General Contractor is presented with a request for documents by any administrative agency or with a *subpoena duces tecum* regarding any records, data, or other documents that may be in General Contractor's possession by reason of this Agreement, General Contractor shall immediately give written notice to the Board and its Attorney with the understanding that the Board shall have the opportunity to contest the process by any means available to it before the records or documents are submitted to a court or other third party. However, General Contractor shall not be obligated to withhold the delivery beyond the time that may be ordered by the court or administrative agency, unless the *subpoena* or request is quashed or the time to produce is otherwise extended.
- J. Joint and Several Liability. If General Contractor, including its successors or assigns, if any, is comprised of more than one person or a combination of legal entities (such as a joint venture), then every obligation or undertaking that General Contractor is required to fulfill or perform is the joint and several obligation or undertaking of each such person or legal entity.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Board of Trustees of Community  
College District No. 508, County of Cook  
and State of Illinois

By: \_\_\_\_\_

Charles R. Middleton  
Board Chair

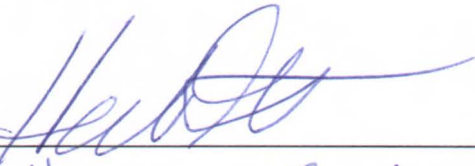
10/15/15

Construx, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

  
HECTOR CASTILLO  
PRESIDENT

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_

Eugene L. Munin  
General Counsel

  
10/14/15