SECTION 00 73 00
SUPPLEMENTARY CONDITIONS

The following supplements modify, change, delete from, or add to the “General Conditions of the Contract for Construction”, AIA Document A201, 2007 Edition. Where any Article of the General Conditions is modified or deleted by these supplements, the unaltered provisions of that article or section shall remain in effect as part of the Contract Requirements.

ARTICLE 1   GENERAL PROVISIONS

1.1   BASIC DEFINITIONS

1.1.1   THE CONTRACT DOCUMENTS

Change first sentence to read as follows:

1.1.1   The Contract Documents are enumerated in the Agreement between Owner and Contractor (hereinafter the Agreement and consist of the Agreement, General Conditions of the Contract for Construction (AIA A201-2007, as amended) and found in the Project Manual, Prevailing Minimum Wages, Non-Collusion Affidavit, Performance Bond (form provided) and Payment Bond (form provided), Contractor's Affidavit of Payment of Debts and Claims (AIA G706), Contractor's Affidavit of Release of Liens (AIA G706A), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as Bidding Requirements (Advertisement for Bids, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to Bidding Requirements)."

1.1.8   INITIAL DECISION MAKER

Add section as follows:

1.1.8.1   The Architect shall be the Initial Decision Maker."

1.1.10   The Project Manual

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract (General, Supplementary and other Conditions) and specifications."

1.2   CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
Add sections as follows:

1.2.4 In the case of an inconsistency within or between Contract Documents, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation. Such conflict shall be promptly referred to the Architect for interpretation and final decision."

1.2.5 Where the Work is shown on only half or portion of a Drawing or there is an indication of continuation, the remainder being shown in outline, the Work drawn out in detail shall be understood to apply to other like portions of the structure."

§1.6 TRANSMISSION OF DATA IN DIGITAL FORM

Add sections as follows:

1.6.1 The Architect may, with concurrence of the Owner, furnish to the Contractors versions of instruments of Service in electronic form. The Contract Documents executed or identified in accordance with Section 1.2.1 shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers."

1.6.2 The Contractor shall not transfer or reuse Instruments of Service in electronic or machine readable form without prior written consent of the Architect.

ARTICLE 2 OWNER

2.1 GENERAL

2.1.2 Change to read as follows:

2.1.2 No mechanics liens may be filed against the Owner's property, as the Owner is a public school district and the labor and materials are being furnished for a purely public purpose pursuant to 49 P.S. 1303.

Add section as follows:

2.2.6 The Owner will provide for special testing and inspections not specifically indicated as by the Contractor.

2.4 OWNER’S RIGHT TO CARRY OUT THE WORK

2.4 Change to read as follows:

2.4 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or project schedule, or fails to adequately staff the project with proper management, supervision, materials and Workforce, including its duty to proceed expeditiously
with adequate forces so as to achieve substantial completion within the Contract Time, and fails within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of such default of neglect with diligence and promptness, the Owner may after such seven (7) day period, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses, including attorney's fees and costs and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner. Notwithstanding the above, the Owner shall not be required to comply with the notice provisions hereof, and may proceed to correct deficiencies if the Contractor fails within a twenty-four (24) hour period after receipt of written notice from the Owner to commence and continue correction of such deficiencies where further delay would cause substantial disruption to the project schedule. Owner shall have the further right to carry out the Work without any prior notice to the Contractor, in an emergency affecting safety of persons or property, and said Work is necessary to prevent threatened damage, injury or loss. Owner's right in this regard shall not relieve Contractor of its obligations and responsibilities under the Contract Documents and shall not give rise to a duty on the part of the Owner to exercise the right for the benefit of the Contractor or any other person or entity.

2.5 OWNER'S REPRESENTATIVE

2.5 Add section to read as follows:

2.5 The Owner reserves the right to employ a qualified person or firm as Owner's Representative, to observe the Work in conjunction with the Architect. Owner's Representative shall have the right to attend job conferences or project meeting and to come to the Project site while the Work is in progress. Owner's Representative shall observe the Work and report any defects or discrepancies in the Work to the Architect. Nothing herein contained shall create any contractual relationship between Owner's Representative and the Contractor, Subcontractor or Sub-subcontractor. Owner's employment of a project representative shall not relieve the Contractor of any of its responsibilities or obligations under the Contract Documents.

ARTICLE 3 CONTRACTOR

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.4 Delete the last sentence.

Add the following new sections:

3.2.5 The Contractor shall be liable to the Owner and/or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or from differences between field measurements or conditions and the Contract Documents, if the Contractor knowingly fails to report such error, inconsistency, omission or difference to the Architect, or
where the Contractor fails to carefully study and compare the Contract Documents relative to that portion of the Work for which the Contractor is responsible, such that, had Contractor done so, Contractor would have discovered such error, inconsistency or omission and reported same to Architect.

3.2.6 The Owner shall deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior correspondence or documentation.”

3.2.7 Existing Structures: Reference is made in the Bidding Documents for identification of those Drawings of physical conditions in or relating to the existing surface structures which are at or contiguous to the Project site that have been utilized by the Architect in preparation of the Contract Documents. Contractor may rely on the accuracy of the technical data contained in such drawings but not the completeness thereof for Contractor's purposes. Contractor shall have full responsibility with respect to physical conditions in or relating to such natures.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

Add the following new sections:

3.3.4 The Contractor who is awarded the general construction portion of the Project shall provide for the coordination of the Work of its own forces and of all separate contractors.

3.3.5 Contractor's supervision of Work shall include expediting and coordinating Work of trades. Contractor shall perform all supervising and procuring required to ensure delivery of materials to maintain Work schedules of Subcontractors and progress schedule of project to ensure full completion of Work, to supply equipment or instruments necessary to complete specified tests, checks, balancing of system, to furnish operating instructions, etc.

3.3.6 The Contractor, his employees or his Subcontractors shall not install any product or equipment in a manner which is in direct conflict with the manufacturer's recommended requirements. If the manufacturer of the product or equipment has requirements which cannot be met by the specific application indicated, the Contractor shall bring this information to the attention of the Architect. Products or equipment installed contrary to their manufacturer's requirements shall be replaced at no additional cost to the Owner unless specifically authorized in writing by the Architect.

3.4 LABOR AND MATERIALS

3.4.1 Change section to read as follows:

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

Add the following new sections:

3.4.4 Owner specifically reserves the right to reject any person Owner deems unfit to be permitted on school grounds and in proximity to students. Upon written notice from Owner, Contractor shall have all such persons removed from the Project. Owner’s right to declare such person unfit shall not be limited to the required exclusion of persons from school property as set-forth in Section 1-111 of the Pennsylvania Public School Code and/or Subchapter C.2 of the Child Protective Service Law."

3.4.5 Work specified which becomes unavailable due to strike, loss of plant through fire or flood, bankruptcy, or other unforeseeable cause, shall be substituted equally from another source subject to substitution procedures in the Contract Documents.

.1 Work covered by Section 3.4.5 shall not automatically entitle the Contractor to either an increase in Contract Sum or Contract Time. Notwithstanding the same, if the Work covered by 3.4.5 results in a savings to Contractor, Owner shall be entitled to a reduction in the Contract Sum. In any event, Work covered by Section 3.4.5 shall be incorporated into the Project through a properly executed Change Order.

.2 Items not ordered by the Contractor in a timely manner for incorporation into the Work will not be considered for claims by the Contractor for additional time or costs."

3.4.6 Substitute Work offered and approved shall not be a basis for contingent extra charges or additional charges due to changes in related Work, such as rough-in, changes in supporting foundations, and other related Work. The cost of changes in the Work by other contracts as a result of substitute Work of this Contract shall be the responsibility of this Contractor and will be deducted by Change Order.

.1 The Contractor shall assume full responsibility for substitute Work.

.2 The Owner shall be entitled to deduct from the Contract Sum amounts to be paid to the Architect to evaluate the Contractor’s proposed substitutions and to make agreed-upon changes in the Drawings and Specifications made necessary by the Owner’s acceptance of such substitutions."

3.4.7 Whether indicated or not, all products included in the Work shall be asbestos-free and lead-free. If any suspected asbestos-containing or lead-containing materials are installed, the Owner has the right to have the material in question tested and if proven to contain asbestos or lead exceeding the amounts permitted by law, the Contractor shall remove all material in question and replace it with acceptable material at no additional cost to the Owner.
3.4.8 By submitting a bid, the Contractor agrees that all pricing (either components or lump sum) shall remain in effect for the duration of the Work. Under no circumstances shall the Contractor increase material or other costs during the duration of the Work from prices submitted and accepted by the Owner.

3.5 WARRANTY

Add section to read as follows:

3.5.1 The minimum Warranty period as defined above shall be one (1) year from the date of Substantial Completion. The warranty provided in Section 3.5 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

3.6 TAXES

Change section to read as follows:

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor and shall comply with the following:

3.6.1.1 Contractor shall be responsible for and shall pay all applicable sales, use, excise or other taxes required by law on all materials, tools, apparatus, equipment, fixtures, services, incidentals or otherwise which may be purchased or used in connection with the Work or portions thereof. The Contract Sum shall include all applicable taxes. Notwithstanding the foregoing, however, Owner is exempt (excluded) from sales and/or use tax in Pennsylvania on certain transactions. Contractor and all Subcontractors shall purchase as exempt (excluded) from Pennsylvania sales and/or use tax all tangible personal property within the definition of 'building machinery and equipment' as that term is defined in Act No. 45-1998 (72 P.S. § 7201 et seq.). No charges shall be allowed for such exempt items. It shall be the Contractor's responsibility to determine those items for which an exemption will apply, and the Contractor shall obtain legal or other tax advice to determine how and to what extent an exemption from the taxes apply. In order to facilitate such purchase free of sales and/or use tax in Pennsylvania, and upon certification by Contractor that an item is, in fact, tax exempt, the Owner agrees to execute a tax exemption certificate certification prepared by Contractor or a Subcontractor as may be required by the regulations of the Pennsylvania Department of Revenue.

3.6.1.2 Assignment of Refund Rights.

Owner shall be entitled to claim refunds of sales and/or use tax paid on these and other purchases of tangible personal property required in connection with the Work. The Contractor and all Subcontractors hereby assign to Owner all rights to any such refund claim and to any resulting refund and hereby appoint the Owner as their Attorney-in-Fact to execute and acknowledge in their respective names and to prosecute such refund claims before administrative agencies an courts in Pennsylvania having jurisdiction over such claims. The Owner or its agent shall have the right to review the books and records of the
Contractor and all Subcontractors for the purpose of documenting and substantiating any such refund claim. Contractor and all Subcontractors shall cooperate fully with the Owner in pursuing any such refund claim and shall make available to the Owner any applicable documents.

3.6.1.3 Access to Accounting Records.
   .1 The Contractor shall keep such full and detailed accounts as may be necessary for proper financial management under the Contract and the system shall be satisfactory to Owner. The Owner or its representative shall be afforded access to, including the right to photocopy, all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Work, and the Contractor shall preserve all such records for a period of three (3) years or for such longer period as may be required by the law, after receipt of final payment.

3.6.1.4 Contracts with Subcontractors.
   .1 The Contractor agrees to include the "Access to Accounting Records" and "Assignment of Refund Rights" Sections, in full, in any contracts with Subcontractors. The Contractor further agrees that it will not file a claim for refund for any sales and/or use tax which is the subject of the assignment in Section 3.6.1.2. Contractor shall obtain from all Subcontractors similar agreements that they will not file claims for refund for any sales and/or use tax which is the subject of the assignment in Section 3.6.1.2.”

3.7 PERMITS, FEES AND NOTICES

3.7.1 Change section to read as follows:
   3.7.1 The Contractor shall secure and pay for the building permit from Downingtown Borough and all other permits, governmental fees and licenses necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

3.7.4 In the first sentence change “21 days” to read “2 days”.

3.8 ALLOWANCES

3.8.1 Change section to read as follows:
   3.8.1 No cash allowances will be permitted on this Project.

3.8.2 Delete this section in its entirety.

3.8.3 Delete this section in its entirety.

3.9 SUPERINTENDENT
3.9.1 Change section to read as follows:

3.9.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in regular attendance at the Project site full time during the progress of the Work until Substantial Completion, and for such additional time thereafter as the Architect may determine to be necessary for the expeditious completion of the Work. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

3.9.2 Change section to read as follows:

3.9.2 The Contractor within ten (10) days after award of the Contract shall furnish in writing to the Owner through the Architect the name, résumé and qualifications of a proposed Superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection. The Project Superintendent must be approved by the Owner and Architect prior to the Start of Work. The résumé shall include at least three (3) recent projects of similar contract scope with the names and telephone numbers of Owner and Architect representatives for each project. The Superintendent shall be on site full time and shall not be changed except with consent of the Owner and Architect, unless the Superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. In any event a replacement Superintendent shall be subject to the Approval of the Owner and Architect.

3.9.2.1 If the Owner or the Architect has reasonable objections to any superintendent or assistant, the Contractor shall submit a substitute to whom the Owner or the Architect has no reasonable objection; no increase in the Contract Sum or Contract Time shall be allowed for any such substitution.

3.9.3 Change section to read as follows:

3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. If during the course of the Project, it is evident that the Superintendent is not competent or is not managing the progress of the Work or is not coordinating the various trades under the Contractor's supervision, then the Architect will document such findings to the Contractor. If within ten (10) days of receiving such notice, no substantial effort or correction of the findings is made, then the Owner, based upon the Architect's request, may require the replacement of the Superintendent with an acceptable Superintendent.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

SUPPLEMENTARY CONDITIONS 00 73 00-8
3.10.1 Change section to read as follows:

3.10.1 Within ten (10) days after issuance of the Notice to Proceed, the Contractor who is awarded the general construction portion of the Project shall prepare and submit for the Owner’s and Architect’s information a Construction Schedule for the Work. The Construction Schedule must be provided in a CPM bar chart format with retained logic. The duration of the Contractor’s Construction Schedule shall not exceed the time limits current under the Contract Documents, shall be updated bi-weekly, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Any subsequent revisions to the final Contractor's Construction Schedule which reflects additional time shall only be binding on the Owner if approved in a Change Order. The Construction Schedule shall identify required delivery dates for all major components of the Work.

3.10.2 Change section to read as follows:

3.10.2 Within ten (10) days after the issuance of the Notice to Proceed, the Contractor shall prepare and submit to the Architect a Schedule of Submittals. The Schedule of Submittals shall be coordinated with the Contractor's Construction Schedule and shall allow the Architect reasonable time to review submittals.

3.10.3 Change section to read as follows:

3.10.3 The Contractor shall complete any portion or portions of the Work in such order as may be stated in the Project Manual; or in the absence of specification requirements stating the order of the Work, the Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and the Architect. All Work shall be so arranged and Contractor shall perform their Work so as to complete the Work by the date set forth in the Contract.

3.10.5 Recovery Schedule: Should the updated Construction Schedule, at any time during the Contractor's performance, show that the Contractor is seven (7) or more days behind schedule on any critical path work activity, within three (3) days of issuance of the updated schedule showing the delay, Contractor shall prepare a recovery schedule at no cost to the Owner explaining and displaying how the Contractor intends to reschedule his Work in order to gain compliance with the Construction Schedule during the immediately subsequent pay period. The recovery schedule shall be submitted to the Architect and Owner and shall incorporate updated information from Subcontractors and others. Contractor shall prepare the recovery schedule to the same level of detail as the Construction Schedule and submit it bi-weekly until the schedule slippage has been corrected.”

3.10.6 The Contractor shall be responsible to perform Work to ensure that the Project is completed by the Project Contract Completion Date and any milestone dates established in the Contract Documents are met. Any claims for additional costs associated with completion of the Work within the required Contract time frames will not be considered. If the Contractor believes
that extra time, in any form such as shift Work, overtime, and premium time, is necessary to meet Contract requirements regardless of trade, should include these costs in their bids. Failure to recognize the extra costs in his bid shall not relieve the Contractor from utilizing shift, overtime, or premium time Work in performance of his Contract. All costs associated with meeting the timeframes indicated in the construction schedules shall be included in the Contract Sum.

3.10.7 Preparation, review and updating of the Project Schedule shall not result in liability on the part of Owner, Owner’s representative (if any) or Architect, in favor of Contractor for time, cost overruns or schedule changes which are required to maintain project Substantial Completion date and all milestone dates established in the Contract Documents. This provision shall not relieve General Contractor of any liability arising under Section 6.2.3.

3.10.7.1 Contractor shall consult with his major Subcontractors relating to the preparation of his construction plan and Construction Schedule. Major Subcontractors shall receive copies of those portions of Contractor’s Construction Schedule which relate to their Work and shall be continually advised of any updates or revisions to the Construction Schedule as the Work progresses. When Contractor submits his Construction Schedule to the Owner and Architect or makes any proposed updates or revisions to such Schedule, it shall be concluded by Owner and Architect that Contractor has consulted with and has the concurrence of his major Subcontractors. Contractor shall be solely responsible for ensuring that all Subcontractors comply with the requirements of the Construction Schedule for their portions of the Work.

3.10.7.2 The review by Owner or Architect of the Construction Schedule or any other schedule or plan of construction of Contractor, does not constitute an agreement by Owner or Architect of any start or finish date in the schedule or specific durations or sequences for activities of the Contractor; further, nothing herein shall be construed as modifying or changing, or excusing the performance of Contractor of required portions of the Work by the Completion Dates as set forth in the Contract Documents.

3.10.7.3 Review by the Owner or Architect of Contractor’s Construction Schedule, or any revisions or updates thereto, are advisory only and shall not relieve Contractor of the responsibility for accomplishing each portion of the Work within each and every applicable Completion Date. Omissions and errors in the approved or accepted Construction Schedule, or any revisions or updates shall not excuse performance which is not in compliance with the Contract Documents. Review by the Owner or Architect does not make Owner or Architect liable to Contractor for time or cost overruns flowing from such omissions or errors. This provision shall not relieve General Contractor from any liability otherwise arising under Section 6.2.3.

3.10.8 Application for Payment: Contractor understands and agrees that the submission and acceptance of progress updates are an integral part and basic element of the Applications for Payment; and that Contractor shall not be entitled to any progress payment under the Contract Documents until Contractor has fully complied with the requirements of this Section 3.10.
3.10.9 Contractor shall be solely responsible for expediting the delivery of all materials and equipment to be furnished by or to him so that the progress of construction shall be maintained according to the currently accepted Construction Schedule for the Work. Contractor shall notify Owner and Architect in writing, and in a timely and reasonable manner, whenever Contractor determines or anticipates that the delivery date of any material or equipment to be furnished by Contractor shall be later than the delivery date indicated by the Construction Schedule, or required consistent with the completion requirements of the Contract Documents, subject to schedule updates as herein provided.

3.10.9.1 Contractor shall ensure that off the site work activities do not adversely affect progress in accordance with the Construction Schedule.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 Change section to read as follows:

3.11.1 The Contractor shall maintain in a safe place at the site one record copy of all Drawings, Project Manual, Addenda, Written Modifications, Change Orders, Construction Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show all changes made during construction. Annotations on the Drawings shall show changes in the Work occasioned by field conditions or Owner/Architect authorized changes to the Work. All notations shall be dimensioned where the location of the changed item is different than that originally shown and shall show all underground utilities, sewer lines and the like which have been installed by the Contractor, giving accurate dimensions from column centers and/or exterior building walls. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

Add the following new sections:

3.12.11 The Contractor shall reimburse the Owner for Additional Services of the Architect by means of a Change Order for services beyond the following limits:

.1 Review of any shop drawings or product literature submitted by the prime Contractor to the Architect for the purpose of substituting materials, products, equipment or systems different from those listed in the Contract Documents, when such substitutions are not specifically permitted by the Contract Documents, regardless of whether or not the substitution is accepted by the Architect for the Project.

.2 Evaluation and response to the Contractor's requests for information, where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or other prior correspondence or documentation.
3. More than two (2) reviews of any revised shop drawing, product data item, sample and similar submittals required by the Project Manual.

3.15 CLEANING UP

3.15.1 Change section to read as follows:

The Contractor shall keep the premises clean at all times of dirt, rubbish and debris resulting from the Work and shall remove all rubbish and debris in metal containers at the end of each Working day. If the premises are not kept clean at all times and if within 24 hours after verbal notice form the Owner the dirt, rubbish, and debris is not cleaned up by the Contractor then Owner will arrange for such cleanup at the Contractor's expense. Prior to Substantial Completion of the Work the Contractor shall do the cleaning of the surfaces of all his installations as may be required by the various Specifications to the satisfaction of the Architect."

3.18 INDEMNIFICATION

3.18.1 Change section to read as follows:

To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by insurance supplied by either the Owner, the Contractor, or the Subcontractors as required by Article 11 of this Contract, Contractor shall indemnify, defend (at Owner's request and through counsel reasonably acceptable to Owner), and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.1."
rights of any employee. The Contractor, and each Subcontractor, regardless of tier, shall defend, hold harmless and indemnify the Owner against and from any and all claims, demands, suits, actions, costs and expenses including reasonable attorneys’ fees, growing out of any claims by an employee or independent contractor of any Contractor or Subcontractor of any tier alleging the violation of any of the individuals’ employment rights, whether legal, constitutional or contractual in nature. This provision shall be accorded the broadest meaning permitted by law.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.2 Change section to read as follows:

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

4.1.3 Change section to read as follows:

4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect whose status under the Contract Documents shall be that of the former Architect.

4.1.4 Add new section to read as follows:

4.1.4 The term ‘Architect’ or ‘Engineer’ as used in the contract and design documents shall be meant to refer to Michael Johnson Architect, LLC.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

Add new sections to read as follows:

4.2.2.1 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

4.2.7.1 In no case will the Architect’s review period on any submittal be more than 14 days after receipt of the submittal from the Contractor, unless otherwise agreed to in writing by the Owner.

4.2.11 Change section to read as follows:

4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor.
The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account on failure by the Architect to furnish such interpretations until 10 days after written request is made for them.

Add new section to read as follows:

4.2.12.1 Written or graphic interpretations by the Architect will be considered as minor changes in the Work. No claims for additional time or money will be honored due to such interpretation. Any interpretation offered by the Architect that Contractor determines to affect Contract Sum or time shall be returned to the Architect within 5 days and will be treated as a Change Proposal Request. Provide complete substantiation of changes in Contract Time or Contract Sum as required for a Change Proposal Request.”

ARTICLE 5 SUBCONTRACTORS

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

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, within five (5) days after award of the Contract, shall furnish in writing to the Architect for review by the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. In all cases, this notification shall be received in writing no less than 5 days prior to a Subcontractor starting Work. The Architect may reply within 7 days to the Contractor in writing stating (1) whether the Owner, the Architect has reasonable objection to any such proposed person or entity or, (2) that the Architect or Owner requires additional time for review. Failure of the Owner or Architect to reply within the 7-day period shall constitute notice of no reasonable objection. Nothing in this Section shall obligate the Owner or Architect to conduct an investigation of any Contractor or Subcontractor.

5.2.3 Change section to read as follows:

5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall submit a substitute to whom the Owner and Architect have no reasonable objection. However, no increase in the Contract Sum or Contract Time shall be allowed for such substitution.”

Add new section to read as follows:

5.3.1 Contractor shall require each Subcontractor to (1) Inspect surfaces and job
conditions before beginning Work at Project site, (2) Accept or cite necessary corrections in surfaces and job conditions before beginning Work at Project site, and (3) Protect his own materials, equipment and Work from damage, injury or loss due to weather or due to Work of the Contractor or other Subcontractors. Appropriate means of protection shall be supplied, and removed when no longer required.

ARTICLE 6  CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.2  MUTUAL RESPONSIBILITY

6.1  OWNER’S RIGHT TO PERFORM CONSTRUCTION WORK AND TO AWARD SEPARATE CONTRACTS

6.1.3  Delete this section.

6.1.4  Delete this section.

6.2  MUTUAL RESPONSIBILITY

6.2.3  Change section to read as follows:

6.2.3  The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of delays, improperly timed activities, failure to coordinate construction activities and operations in accordance with Section 3.3.4, or defective construction. Notice by the Owner of claims related thereto shall authorize Architect to withhold certification of payment in accordance with Section 9.5.1. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction or coordination of a separate Contractor, providing Contractor has complied with all provisions of the Contract Documents, including, but not limited to, a timely and properly supported claim submitted in accordance with the requirements of the Contract Documents. The sole remedy against the Owner for delays shall be the allowance to the successful claimant of additional time for completion of the Work.

ARTICLE 7  CHANGES IN THE WORK

7.1  GENERAL

Add the following new section:

7.1.2.1  Change Orders issued in accordance with Section 9.8.6 or Section 9.8.7 shall not require the agreement of the Contractor when proper evidence is provided by the Owner and
the Architect.

Add new section to read as follows:

7.1.4 In order to facilitate checking of quotations for adjustments in the Contract Sum, all proposals, except as so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and subcontracted. Labor and materials shall be itemized. When major cost items are subcontracted, these costs shall be itemized also.

7.2 CHANGE ORDERS

Add the following new section:

7.2.3 Change Orders issued in accordance with Sections 7.1.2.1, 9.8.6 and 9.8.7 shall not require the signature of the Contractor.

7.3.7.4 Change section to read as follows:

7.3.7.4 The allowance for overhead and profit, included in the total cost to the Owner, shall not exceed a combined total of fifteen percent (15%). Overhead and profit shall include costs of premiums of all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work and additional costs of supervision and office personnel directly attributable to the change. The Contractor shall limit its profit and overhead, when combined with that of its Subcontractors and Sub-subcontractors, to a total of fifteen percent (15%) of the value of the related Work.

7.3.7.5 Delete this section.

Add new sections to read as follows:

7.4.1 The Work described therein shall be promptly executed in accordance with the Contract Documents. Proceeding with the Work indicates the Contractor's acknowledgment that there will be no change in the Contract Sum or the Contract Time.

7.4.2 If it is the conclusion of the Contractor that the Work described therein requires an adjustment in the Contract Sum, or of the Contract Time, the Contractor shall issue a fully itemized proposal within five (5) Working days or shall notify the Architect in writing of the date by which such proposal shall be received. When the Work alters the Contract Time or the Contract Sum, the Work described therein shall not be executed without a Change Order signed by the Architect and Owner. Failure to issue a proposal or written notification to the Architect within the appropriate time shall indicate the Contractor's acknowledgment that there will be no change in the Contract Sum or the Contract Time.

ARTICLE 8 TIME

SUPPLEMENTARY CONDITIONS 00 73 00 - 16
8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 Delete the words “labor disputes”.

8.3.3 Change section to read as follows:

8.3.3 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under this Section 8.3, shall be the sole remedy of the Contractor against Owner or Architect for (1) delay in the commencement, prosecution or completion of the Work; (2) hindrance or obstruction in the performance of the Work; (3) loss of productivity; or (4) other similar claims (collectively referred to in this Section as delays) whether or not such delays are foreseeable, unless a delay is caused by the acts of the Owner constituting active interference with the Contractor’s performance of the Work, and only to the extent that such acts continue after Contractor furnishes the Owner with written notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages against Owner or Architect, in connection with any delay, including, without limitation, consequential damages, lost opportunity cost, impact damages or similar remuneration. The Owner’s exercise or failure to exercise any rights or remedies under the Contract Documents (including without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency thereof, shall not be construed as active interference with the Contractor’s performance of the Work."

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 Change section to read as follows:

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

9.2 SCHEDULE OF VALUES

9.2 Change section to read as follows:

9.2 Where Contract is based on a stipulated sum, the Contractor, within ten (10) days after receipt of a Notice to Proceed and before the first application for payment shall submit to the Architect a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such a form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as the basis for reviewing the Contractor’s Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1.1 Change section to read as follows:
9.3.1.1 As provide in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives.

9.3.2 Change section to read as follows:

9.3.2 Payment on account of materials and equipment shall be made subject to the following:

9.3.2 Add new sections as follows:

9.3.2.1 Materials Stored On Site. Materials properly stored at the construction site may be included in the Contractor's application for payment, subject to the following conditions: (1) All materials shall be stored in strict compliance with the manufacturer's recommendations in secure, dry, and where appropriate, temperature controlled enclosures; (2) Contractor shall provide property insurance covering materials stored at the construction site to the extent that Owner's property insurance does not provide coverage; (3) Contractor shall provide an accurate inventory of all materials included for payment with each application for payment. Contractor shall maintain the inventory until the materials are installed or otherwise incorporated into the Work; and (4) payment for materials stored on the construction site shall be limited to the actual, invoiced cost to the Contractor, F.O.B. the construction site. Contractor shall warrant that all suppliers are promptly paid in full for all materials included for payment and that materials are not encumbered by any lien, claim or mortgage that would prevent the Owner from taking full possession of the materials. Contractor shall produce satisfactory evidence of same to Owner.

9.3.2.3 No separate payment will be made for submittal preparation, unless approved by Architect."

9.4 CERTIFICATES FOR PAYMENT

Add the following new section:

9.4.3 Monthly payments to the Contractor will be made on the basis of submission prepared by the Contractor. The Contractor's Requisition for Payment Due will require the breakdown of total Work complete to date of submission. From this total, retainage will be withheld from each progress payment in the amount of ten (10%) percent of the amount due the Contractor until fifty (50%) percent of the Contract Work is completed. When the Contract is fifty (50%) percent completed, one-half of the amount retained by the Owner may be returned to the Contractor; provided that the Architect approves the application for payment, and provided further that the Contractor is making satisfactory progress and there is no specific cause for greater withholding. The sum or sums withheld by the Owner from the Contractor after the Contract Work is fifty (50%) percent completed shall not exceed five (5%) percent of the value of completed Work based on monthly progress payment requests; provided, however, that in the event a dispute arises between the Owner and the Contractor, additional retainage in the sum of one and one-half times the amount of any possible liability may be withheld until such
time as a final resolution is agreed to by all parties. All monies retained by the Owner may be withheld from the Contractor until Substantial Completion of the Contract.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1.6 Change section to read as follows:

9.5.1.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

Add new items following §9.5.1.7 as follows:

.8 Failure to comply with Project Safety Requirements as set forth in the Project Safety and Health Management Plan; or

.9 Failure to conform to the salary reporting requirements for certification of payment of PA Prevailing Wage Rates or Davis Bacon Wage Rates, as applicable. Each month’s payment application must include the certified payrolls for the prior month."

9.7 FAILURE OF PAYMENT

9.7 In the second line, change “seven” days to read “seventeen” days.

9.8 SUBSTANTIAL COMPLETION

9.8.1 Add the following to the end of this section:

No portion of the Work will be considered substantially complete until all of the following requirements have been met:

.1 all of the project parts and systems are accessible, operable and usable by the Owner, including the site work;

.2 the Project is clean, as defined elsewhere in the Contract Documents; and

.3 preliminary maintenance manuals have been submitted to the Architect; and

.4 preliminary training of the Owner’s personnel has taken place as required elsewhere in the specifications; and

.5 annotated Record Drawings have been submitted to the Architect; and

.6 all Federal, State and local authorities having jurisdiction over the Project have
issued the requisite certifications and/or approvals so that the Owner can occupy or utilize the Work for its intended purpose.”

Add the following new sections:

9.8.6 In no case shall the time established for the completion and correction of items on the list extend beyond ten (10) days after Certification of Substantial Completion, except for delay beyond the Contractor’s control. The Contractor shall pay for all architectural and consultant services incurred thereafter due to the failure of the Contractor to complete and/or correct the Work on the list or to submit documentation and items required for final completion and final payment. Payment for additional architectural and consultant services shall be deducted from the Contract Amount.

9.8.7 The Contractor shall reimburse the Owner for Additional Services of the Architect by means of a Change Order, not requiring the signature of the Contractor, for services beyond the following limits:

.1 More than two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
.2 More than thirty (30) days after the date established in the Contract Documents for substantial completion of the Work.

9.9.1 Add sentence at the end of this section to read:

The Contractor shall not withhold Partial Use from the Owner due to failure by the Contractor to complete the Work in accordance with the Contract Documents in the time stipulated in the Agreement and approved Change Orders for extensions in time.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Add new sections as follows:

9.10.1.1 The Architect will perform no more than one (1) inspection to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

9.10.1.2 The Architect shall make final inspection within ten (10) days following receipt of the Contractor’s request for final inspection and final Application for Payment.

9.10.2 Change section to read as follows:

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

Add the following new sections:

9.10.6 The Contractor shall reimburse the Owner for Additional Services of the Architect by means of a Change Order, not requiring the signature of the Contractor, for services beyond the following limits:

.1 More than one (1) inspection for any portion of the Work to determine whether such portion of the Work is finally complete in accordance with the requirements of the Contract Documents.

Add the following new section:

9.11. LIQUIDATED DAMAGES

9.11.1 Actual damages for delay in the time of completion are impossible to determine. Accordingly, the Contractor shall be liable for, and shall pay to the Owner as fixed, agreed and liquidated damages, the sum or sums indicated for each calendar day (Sundays and holidays included) which the actual time of Substantial Completion shall be delayed beyond the time of completion indicated in the Form of Agreement.

9.11.2 In addition, Contractor shall be liable for, and shall pay to Owner as fixed, agreed and liquidated damages the sum or sums indicated for each calendar day (Sundays and holidays included) which the actual Final Completion, including completion or correction of punch list items, shall be delayed beyond the time indicated in the Form of Agreement.

9.11.3 The Owner shall have the right to deduct the total amount of any fixed, agreed and liquidated damages for which the Contractor may be liable from any moneys otherwise due to the Contractor under the Contract, including any retainage held by the Owner.
9.1.1.4 The surety upon which the Performance Bond furnished by the Contractor shall be liable for any fixed, agreed and liquidated damages for which the Contractor may be liable under this Section 9.11, to the extent that the Contractor shall not make settlement therefore with the Owner.

9.11.5 The Contractor and the Contractor's Surety shall be liable for and shall pay the sums hereinafter stipulated as liquidated damages for failure to provide substantially complete Work within time limits indicated in the Form of Agreement and for failure to complete or correct all items on the Comprehensive List of Items to be Completed or Corrected ("Punch List") within the time limit indicated below.

9.11.6 Liquidated damages for failure to meet Substantial Completion and/or as stipulated for the entire Work shall be calculated at the following rates for each calendar day of delay until the Work is substantially complete.

<table>
<thead>
<tr>
<th>Contract</th>
<th>Damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Window shop drawing delivery (*)</td>
<td>$500.00</td>
</tr>
<tr>
<td>Window Replacement Work</td>
<td>$1,000.00</td>
</tr>
</tbody>
</table>

* Complete manufacturer’s shop drawings delivered electronically to the School District in excess of 28 calendar days after Districts’ notice to proceed with the work.

9.11.7 Liquidated damages for failure to complete or correct "Punch List" items shall be calculated at the following rates for each calendar day of delay beyond ten (10) calendar days after issuance of the Certificate of Substantial Completion until Work for corrections are complete or resolved to the satisfaction of the Owner.

<table>
<thead>
<tr>
<th>Contract</th>
<th>Damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Window Replacement Work</td>
<td>$500.00</td>
</tr>
</tbody>
</table>

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAM

Add the following new section:

10.1.1 The Contractor is reminded that all construction sites are subject to the Occupational Safety and Health Act (OSHA). As such, inspections of the workplace may be conducted by a Compliance Safety and Health Officer at any time. The Contractor is responsible for construction means, methods, techniques, sequences or procedures, and safety precautions and programs in connection with the Work. The Contractor shall bring work sites that are unsafe into compliance with the OSHA requirements. Failure to bring the workplace into compliance shall be sufficient cause for the Owner to reduce or withhold payment. Fines assessed to the Owner, the Architect or agents of either, as a result of an OSHA citation shall
be deducted from payments to the Contractor.

10.3 HAZARDOUS MATERIALS
Add the following new section:

10.3.4.1 No asbestos-containing materials or PCB shall be used on this Project.

ARTICLE 11 INSURANCE AND BONDS
Replace Article 11 as follows:

11.1 CONTRACTOR FURNISHED INSURANCE

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

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

11.1.2 Insurance companies must have a minimum of (or equivalent to) A-VIII by A.M. Best
11.1.3 The insurance required by Section 11.2.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, must be written on an occurrence basis and shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor’s completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

11.1.3.1 The required insurance and amounts shall, unless otherwise specified as a special term of the Contract, be as follows:

.1 Commercial General Liability Insurance with a minimum acceptable limit of coverage of $1,000,000 per occurrence, $2,000,000 aggregate. Coverage must include contractual and products/completed operations liability. Aggregate limits shall be provided on a per project basis.

.2 Business Auto Liability Insurance with a minimum acceptable limit of coverage of $1,000,000 combined single limit for bodily injury and property damage, $2,000,000 aggregate. Coverage must include owned, hired and non-owned vehicles used by contractor and sub-contractors.

.3 Workers’ Compensation Insurance must provide benefits as mandated by the State Workers’ Compensation Statute. Minimum acceptable Employer’s Liability limit is $500,000 for bodily injury by accident and $500,000 for bodily injury by disease.

.4 Excess Liability Insurance with a minimum acceptable limit of coverage of $3,000,000 per occurrence and aggregate. Such coverage shall be excess of the general liability insurance, business auto liability insurance, and employers liability as required by this Contract.

11.1.3.2 Special hazards, if there is a possibility of such hazards existing on the Work contemplated, shall be covered by rider or riders to the policy or policies in amounts acceptable to the Owner. Examples of two such possible hazards, and amount of protection to be provided, are as follows:

.1 Blasting - Two Hundred Thousand ($200,000.00) Dollars. (Example Only)
.2 Hazardous Materials (Asbestos and/or Lead)
Abatement - Five Hundred Thousand ($500,000) Dollars. (Example Only)

11.1.3.3 The Contractor shall maintain during the construction period and for an additional period of two (2) years, from the date of completion of the Project, Completed Operations Insurance in the amount of One Million ($1,000,000.00) Dollars. Contractor shall submit to the Owner a certificate of such insurance on an annual basis throughout the period stated above.

11.2.1 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.3 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to all Certificate Holders by certified mail with return receipt requested. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration time. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

11.2.1.1 The Certificate issued by the Contractor’s insurance carrier shall name the Owner, the Architect and the Architect’s consultants as ‘Certificate Holders’.

11.2.1.2 Cancellation Clause: Shall contain a 30-day notice of cancellation.

11.2.1.3 The following wording or similar language is not permitted on the Certificate:
   .1 endeavor to.
   .2 but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

11.3 Other Insurance: A statement must be included in the description of the certificate of insurance, indicating that the insurance as stated on this certificate is primary to any and all other applicable and collectable insurance coverages.

11.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect’s Consultants as additional insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s completed operations.

11.5 The Contractor shall require all subcontractors furnishing labor or materials for the Project to take out and maintain the same Commercial General Liability Insurance, Business
Auto Liability Insurance, Workers Compensation Insurance, and Excess Liability Insurance as required to be provided by the Contractor in accordance with the Contract so as to protect the subcontractor and also name the Owner, Architect, the Architect's consultants and the Contractor as additional insured.

11.6 Contractor shall provide, pay for and maintain (and shall require Subcontractors of all tiers to provide, pay for and maintain) insurance of the type and limits set forth below. Such insurance shall be maintained in full force and effect from the commencement of the Work by Contractor until final acceptance of the entire Project or the completion of all post-acceptance warranty or related Work by Contractor, whichever is later, and shall be for both on-site and off-site Work.

11.6.1 Professional Liability insurance if Contractor (or applicable Subcontractors) will perform or retain others to perform professional services in connection with the Work, including engineering, architectural, medical, testing, environmental assessment or remediation, or design-build services, with a minimum limit of One Million Dollars ($1,000,000) Per Wrongful Act, Error, or Omission, and a minimum Two Million Dollars ($2,000,000) Annual Aggregate Limit.

11.6.2 Owned and Non-Owned Aircraft. If an aircraft, whether owned or non-owned by the Contractor or any Subcontractor, is used in connection with the Work by the Contractor or any Subcontractor of any tier, the Contractor or Subcontractor, as applicable, shall advise the Owner or its representatives, shall provide a written explanation of the planned use of the aircraft, and shall provide Aircraft Liability Insurance at its sole cost and expense, the conditions and limits to be established by the Owner. The Owner reserves the right to prohibit the use of any aircraft in connection with the Work under this Contract. The minimum limit will be Five Million Dollars ($5,000,000). This insurance shall be primary to all other insurance.

11.7 The Owner, the Architect and its Consultants shall be named as Additional Insureds on the insurance policies described above. Coverage afforded to the Owner, the Architect and its Consultants as Additional Insureds under said policies shall be primary to any insurance carried by Owner, the Architect and its Consultants.

11.8 General Provisions Relating to Insurance

11.8.1 All insurance required by this Contract shall be from insurance companies authorized to transact that class of insurance in the Commonwealth of Pennsylvania and having a minimum rating of (or equivalent to) A- VIII by A.M. Best & Company. When required, certificates must be personally and manually signed by the authorized representative of the insurance company shown on the certificate with proof that he/she is an authorized representative thereof and provided to the Owner’s Representative as evidence of insurance required in accordance with Section 11.3 herein. In addition, certified, true and exact copies of all insurance policies required by this Contract shall be provided by Contractors and Subcontractors within a reasonable period of time upon written request.
11.8.2 All of the insurance provided by the Contractor, Subcontractors and Owner under the terms of this Contract shall provide primary coverage with respect to the Work, unless noted otherwise herein. Any other insurance maintained by Owner, Contractor, or Subcontractor shall be in excess of this insurance and shall not contribute to it.

11.8.3 The issuing insurers will endeavor to provide thirty (30) Days written notice to the Owner and Contractor of any cancellation, intent not to renew, or reduction in the policies’ coverage except in the application of the Aggregate Limit Provisions.

11.8.4 The insurance coverages and limits required under this Contract are designed to meet the minimum requirements of the Owner. They are not designed as a recommended insurance program for the Contractor or its Subcontractor; and meeting these minimum requirements does not relieve such persons or entities of their obligations under any other Paragraph of this Contract. The Contractor shall not be prevented from acquiring, at its own expense, any other additional insurance coverage it deems necessary for the protection of its Work under the Contract.

11.8.5 The amounts and types of insurance required by the Contract shall conform to the minimum requirements set forth in this Article 11, utilizing Insurance Services Office (ISO) policies and endorsements where applicable.

11.8.6 All of the insurance required by this Article 11 shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein.

11.8.7 Owner may elect at any time during the term of this Contract to require Contractor to procure and maintain other or additional insurance. Notice of such election shall be given at least Sixty (60) Days prior to the effective date of the required modifications. Any additional costs incurred by the Contractor or Subcontractors in securing said other or additional insurance shall be reimbursed by the Owner as part of the Cost of the Work, and the Contract Price shall be revised by Change Order to be increased by the amount of such additional cost.

11.8.8 Owner and Contractor waive all rights against (i) each other and the Subcontractors, agents and employees of each other and (ii) Subcontractors, agents and employees, for damages caused by fire or other peril to the extent covered by the Builder’s Risk insurance obtained pursuant to Paragraph 11.1.2 hereof, except such rights as each may have to proceeds of such insurance held by any party to this Agreement or by any Subcontractor. The insurance policies obtained by Owner pursuant to this Article 11 shall include a waiver of subrogation in favor of the Contractor and Subcontractors and the insurance policies obtained by Contractor or Subcontractors pursuant to this Article 11 shall include a waiver of subrogation in favor of the Owner. Without limiting the generality of the foregoing, it is specifically agreed that there is and shall be no waiver of subrogation by Owner or Owner’s other Property and Casualty insurer(s) for claims, damages, or losses of whatever nature or type that are insured by any insurance obtained either by Owner, the Contractor, or any Subcontractor of any tier.
pursuant to any of the provisions of this Agreement. In all events, any insurance obtained by
the Owner, Contractor or any Subcontractor of any tier pursuant to this Agreement shall be
primary and the policies possessed by Owner, Contractor or any Subcontractor of any tier for
purposes of fulfilling the insurance obligations under this Agreement shall be written as primary.

11.10 PERFORMANCE BOND AND PAYMENT BOND

11.10.1 Change section to read as follows:

11.10.1 The Contractor shall furnish a Performance Bond and Payment Bond which meets
the following requirements:

.1 A Performance Bond at one hundred percent of the Contract amount,
conditioned upon the faithful performance of the Contract in accordance with
the Contract Documents. Such Bond shall be solely for the protection of the
Owner.

.2 A Payment Bond at one hundred percent of the Contract amount. Such Bond
shall be solely for the protection of claimants supplying labor or materials to the
Prime Contractor to whom the Contract was awarded, or to any of his
subcontractors, in the prosecution of the Work provided for in such Contract,
and shall be conditioned for the prompt payment of all such material furnished
or labor supplied or performed in the prosecution of the work. ‘Labor or
materials’ shall include public utility services and reasonable rentals of
equipment, but only for periods when the equipment rented is actually used at
this site.

.3 Each of such Bonds shall be executed by one or more surety companies legally
authorized to do business in the jurisdiction where the Project is located.

.4 A Power of Attorney of the surety company must also accompany each Bond,
dated as of the issue date of the Bond.

Add the following new section:

11.11 INSURANCE CARRIERS

11.11.1 All insurance coverages required to be obtained and maintained by the Contractor
shall be furnished by reputable insurers company authorized to do business on a direct basis in
the jurisdiction where the Project is located or otherwise acceptable to the Owner.”

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW
13.1 Change section to read as follows:

The Contract shall be governed by the law of the Commonwealth of Pennsylvania.

13.2 SUCCESSORS AND ASSIGNS

13.2.2 Change section to read as follows:

The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction and/or permanent financing for the Project. In such event, the lender shall assume the Owner’s rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.”

13.5 TESTS AND INSPECTIONS

13.5.3 Change section to read as follows:

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

13.6 INTEREST

13.6 Delete this section in its entirety.

13.7 TIME LIMITS ON CLAIMS

13.7 Change section to read as follows:

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law. Notwithstanding anything herein to the contrary, the Owner does not waive the doctrine of *nullum tempus occurrit regi* and nothing contained in the contract documents shall render said doctrine inapplicable.”

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.3 Delete the last two words “and damages”.

SUPPLEMENTARY CONDITIONS

00 73 00 - 29
14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2 Add the following new section:

14.2.1.5 If the Contractor is adjudged bankrupt or files for bankruptcy or creditor protection under the laws of this United States, Contractor shall provide Owner with thirty (30) days’ written notice before filing.

14.2.5 In the event the Owner terminates the Contract for cause, and such cause is determined to be valid and justified in addition and without prejudice to all other rights, remedies and relief which the Owner may obtain under this Agreement and pursuant to the law, the Owner shall be entitled to payment by Contractor of all reasonable professional fees, including attorneys’ fees, architectural fees, engineering fees, and consulting fees (together with reasonable expenses and disbursements incurred in connection therewith) which the Owner may incur in connection with any legal proceedings or action (including professional fees rendered in anticipation of such proceedings or action). This provision shall create no rights to the Contractor or to any other person or entity for payment of such costs or expenses.

ARTICLE 15 - CLAIMS AND DISPUTES

15.2 INITIAL DECISION

15.2.5 Change section to read as follows:

15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall: (1) be in writing; (2) state the reasons therefore; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties unless the parties elect to pursue mediation or unless litigation is pursued.”

15.2.6 Change section to read as follows:

15.2.6 The parties may elect to pursue mediation of any claim, dispute or other matters in controversy arising out of or related to the Contract, if all pertinent parties agree.”

15.2.6.1 Change section to read as follows:

15.2.6.1 If a party disputes the decision of the Initial Decision Maker, said party shall provide written notice of the continuing dispute to all pertinent parties within 30 days from the date of the initial decision. If a party desires to pursue mediation, said party must notify the other pertinent parties of the desire for mediation in writing and request agreement to mediate from the other parties within 60 days of the initial decision. If the other parties agree to mediate the dispute, they must notify the requesting party of such agreement in writing within 30 days of receipt of
the request to mediate; otherwise, the request to mediate shall be deemed denied.

14.2.6.2 Add the following new section:

15.2.6.2 If the parties elect to pursue mediation, the parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Unless the parties agree otherwise, any mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

15.2.7 Delete this section in its entirety.

15.2.8 Delete this section in its entirety.

15.3 MEDIATION

15.3 Delete this section in its entirety and replace it with the following:

Nothing herein shall change, modify or affect the rights of any party to bring or pursue a claim in court under applicable law.”

15.4 ARBITRATION

15.4 Delete this section in its entirety.

15.4.4 CONSOLIDATION OR JOINDER

15.4.4 Delete this section in its entirety.

END OF SECTION