

ATTACHMENT V

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

TABLE OF ARTICLES

- | | |
|---|---|
| 1. CONTRACT DOCUMENTS | 10. PROTECTION OF PERSONS AND PROPERTY |
| 2. ARCHITECT | 11. INSURANCE |
| 3. OWNER | 12. CHANGES IN THE WORK |
| 4. CONTRACTOR | 13. UNCOVERING AND CORRECTION OF WORK |
| 5. SUBCONTRACTORS | 14. TERMINATION OF THE CONTRACT |
| 6. WORK BY OWNER OR BY SEPARATE CONTRACTORS | 15. MINORITY BUSINESS ENTERPRISE PROCEDURES |
| 7. MISCELLANEOUS PROVISIONS | 16. "BUY AMERICAN STEEL" ACT |
| 8. TIME | 17. OTHER CONDITIONS OR PROVISIONS |
| 9. PAYMENT AND COMPLETION | |

ARTICLE 1
CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all 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 written interpretation issued by the Architect pursuant to Sub-paragraph 2.2.8, or (4) a written order for a minor change in the Work issued by the Architect pursuant to Paragraph 12.4. The Contract Documents do not include Bidding Documents such as the Advertisement or Notice to Contractors, the Instructions to Bidders, sample forms, the Contractor's Bid or portions of Addenda relating to any of these, or any other documents, unless specifically enumerated in the Owner-Contractor Agreement.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Architect and the Contractor, but the Architect shall be entitled to performance of obligations intended for his benefit, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Architect and any Subcontractor or Sub-subcontractor. The Contract shall be executed on the BOECC Document 101A - Agreement between Owner and Contractor. The Drawings, Specifications and all addenda shall be incorporated therein by reference.

1.1.3 THE WORK

The Work comprises the complete construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

1.1.5 SUBSTANTIAL COMPLETION

Substantial completion will have been reached when, in the opinions of the Architect, General Contractor and Owner, the Work is 100 percent completed, including acceptance by local building, fire and health authorities, with the exception of a few minor items delayed for reasons beyond the Contractor's control. Occupancy by the Owner shall not necessarily mean that Substantial Completion has been achieved. See additional clarification and requirements in paragraph 8.1.

1.1.6 MISCELLANEOUS DEFINITIONS

1.1.6.1 The term "Product" as used in these Contract Documents refers to materials, systems and equipment provided by the Contractor.

1.1.6.2 The term "Project Manual" as used in these Contract Documents includes Bidding requirements, Conditions of the Contract, and the Specifications.

1.1.6.3 The terms "Construction Schedule", "Project Schedule" or "Schedule" shall indicate the need and desire for a scheduled view of the project based on dates and events. The Schedule shall be generated by the Contractor for Owner and Architect approval and must be updated at end of each and every month of the project. Schedules shall become more and more detailed within the last 60-days of a project approaching the substantial completion date of a Phase or Contract to further delineate and coordinate when inspections are scheduled, when Owner separate contractors (including but not limited to: finishes, IT, Communications, Controls, Security and similar) may have access to the site, when staff

may enter the building to prepare spaces, including furnishing, educational displays, furniture and similar occupant and educational items. The Owner may request additional Schedules for particular coordination such as: two (2) week or 30 day schedules for day by day events including U & O events, Special Inspections, owner separate contractors, Phased moves, particular site construction activities, Utility outages and similar.

1.1.6.4 The terms "Lead Free" and "Free of Lead" shall mean materials that comply with NSF/ANSI Standard 372 such that the material or product has been certified as meeting a weighted average lead content of less than or equal to .25% (<0.25%) when used with respect to the wetted surfaces of pipes, pipe fittings, and plumbing fixtures. Lead-Free shall be used in conjunction with ANY part of a domestic potable water system. Further, the Owner requires all materials to have certification marks from an approved agency (as recognized by US EPA) that the materials and products comply with the Safe Water Drinking Act that went into effect on January 4, 2014.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed in not less than quadruplicate by the Owner and Contractor. If either the Owner or the Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, the Architect shall identify such Documents.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents. It is assumed the Contractor has obtained, before award of the Contract, clarification of all questions as to intent of Contract Documents, or of assumed, or actual conflict between two or more items in Contract Documents. Should Contractor fail to obtain such clarification, then Architect shall direct work to proceed by the method indicated, specified or required by Contract Documents which will produce the best results, as judged by the Architect. Such direction by Architect shall not entitle Contractor to any claim for extra cost.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. It is the intent of these specifications to describe the work of each trade under its title, but when material and work are described under some title other than that of the trade which is to furnish and perform it, the Contractor shall make the necessary adjustment so that no controversy shall arise among the trades, nor the progress of the work be delayed. Division 0-Conditions of the Contract and Division 1-General Requirements apply to each and every branch of the Work.

1.2.5 Where reference is made to publications, tests, specifications, manufacturer's directions or literature, the latest edition published before date of Specifications shall apply, except as otherwise specified. Such items shall be incorporated with full force and effect as though printed in full.

1.2.6 It is the purpose of these documents to provide the best possible installation of each material and item of equipment utilizing the best installation materials, methods and workmanship obtainable to achieve the result desired.

1.2.7 Abbreviations and symbols used on or in the Contract

Documents have the normal meanings in standard use by Architects and Engineers in the United States. If there are any questions regarding the meaning of any abbreviation or symbol, they should be brought to the attention of the Architect during the Bidding Phase.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All Drawings, Specifications and copies thereof furnished by the Architect are and shall remain his property. They are to be used only with respect to this Project and are not to be used on any other project. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Architect on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's common law copyright or other reserved rights.

ARTICLE 2 **ARCHITECT**

2.1 DEFINITION

2.1.1 The Architect is the person lawfully licensed to practice architecture, or an entity lawfully practicing architecture identified as such in the Owner-Contractor Agreement, and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Architect means the Architect or his authorized representative.

2.2 ADMINISTRATION OF THE CONTRACT

2.2.1 The Architect will provide administration of the Contract as hereinafter described.

2.2.2 The Architect will be the Owner's representative during construction and until final payment is due. The Architect will advise and consult with the Owner. The Owner's instructions to the Contractor shall be forwarded through the Architect. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 2.2.18.

2.2.3 The Architect will visit the site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of his on-site observations as an architect, he will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.

2.2.4 The Architect will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

2.2.5 The Architect shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Architect may perform his functions under the Contract Documents.

2.2.6 Based on the Architect's observations and an evaluation of the Contractor's Applications for Payment, the Architect will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Paragraph 9.4.

2.2.7 The Architect will be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by the

Contractor.

2.2.8 The Architect will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon. Either party to the Contract may make written request to the Architect for such interpretations.

2.2.9 Claims, disputes and other matters in question between the Contractor and the Owner relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Architect for decision which he will render in writing within a reasonable time.

2.2.10 All interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. In his capacity as interpreter and judge, he will endeavor to secure faithful performance by both the Owner and the Contractor, will not show partiality to either, and will not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

2.2.11 The Architect's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.

2.2.12 NO ARBITRATION

Any dispute between parties to the Contract which do not reach amicable settlement shall be tried in State Civil Court rather than by arbitration procedures. The Contractor shall carry on the work and maintain the progress schedule during any dispute, unless directed otherwise by the Owner.

2.2.13 The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.2 whether or not such Work is then fabricated, installed or completed. However, neither the Architect's authority to act under this Subparagraph 2.2.13, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.2.14 The Architect will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.2.15 The Architect will prepare Change Orders in accordance with Article 12, and will have authority to order minor changes in the Work as provided in Subparagraph 12.4.1.

2.2.16 The Architect will conduct inspections to determine the dates of Substantial Completion and final completion, will receive and forward to the Owner for the Owner's review of written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 9.9.

2.2.17 If the Owner and Architect agree, the Architect will provide one or more Project Representatives to assist the Architect in carrying out his responsibilities at the site. The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.

2.2.18 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction as set forth in the Contract Documents will not be modified or extended without written consent of the Owner, the Contractor and the Architect.

2.2.19 In case of the termination of the employment of the Architect, the Owner shall appoint an architect against whom the Contractor makes no reasonable objection whose status under the Contract Documents shall be that of the former architect.

ARTICLE 3

OWNER

3.1 DEFINITION

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Board of Education of Charles County and Charles County Public Schools and/or its authorized representative.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

3.2.1 The Owner shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the site of the Project as known and readily available in the Owner's office. Likewise, the Contractor shall verify locations of all utilities and boundaries before starting work (See 7.10).

3.2.2 Except as provided in Subparagraph 4.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.2.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.4 Contractor shall pay the actual cost of reproduction for all sets of plans and specifications requested by the company.

3.2.5 The Owner shall forward all instructions to the Contractor through the Architect.

3.2.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11 respectively.

3.2.7 The Owner shall pay General Building Permit and General Site Permit fees and permanent utility connection fees. Likewise, the contractor shall pay ALL trade permit fees and expenses, permit inspection fees and re-inspection fees and inspection penalties. Contractor shall pay all temporary or transfer utility and permit fees.

3.3 OWNER'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2 or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within three days after issuance of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of the Architect. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner including compensation for additional engineering and administrative services.

ARTICLE 4 CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Architect any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or the Architect for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor.

4.3.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Architect in his administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 7.7 by persons other than the Contractor.

4.3.4 The Contractor's Project Manager shall fully support the project on a daily basis including management and administration of the contract, subcontractors, materials and suppliers. The Project Manager shall also support the Superintendent staff, including assistants.

The Project Manager shall prepare Completion Lists for general construction and subcontractor work to aid the construction superintendent in the management process of the construction. Completion Lists shall be prepared at the following minimum intervals: 1) Prior to ceiling close-in to assure all mechanical, sprinkler, electrical systems, Datacom systems and similar are complete per plans and specifications and to local AHJ satisfaction, as well as Owner satisfaction; 2) Sixty (60) days prior to scheduled substantial completion for site; 3) Sixty (60) days prior to the Building Substantial Completion; 4) Thirty (30) days prior to scheduled substantial completion for site; 5) Thirty (30) days prior to completion of the Substantial Completion of the Building; and 6) Whenever deemed appropriate by the Owner to facilitate any work completion of a work Phase or Work item. The Project Manager may be requested, by Owner, to certify completion of the work as listed and as approved by the Owner or Architect.

4.4 LABOR AND MATERIALS

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

4.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any

unfit person or anyone not skilled in the task assigned to him.

4.5 WARRANTY

4.5.1 The Contractor warrants to the Owner and the Architect that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2.

4.5.2 The Contractor and his Subcontractors, shall fully investigate and warrant to the Owner by written and signed statement that, to the best of his/her information, knowledge and belief, no asbestos containing building materials (ACBM) are contained in this building. At the request of the Owner, the General Contractor and each Subcontractor shall provide material safety data sheets (MSDS), listing the materials contained in any building material, building component or parts thereof. The Contractor shall provide a letter of certification attesting to the building as being free of ACBM and shall be provided by the Contractor on letterhead with original signature and corporate seal.

4.5.3 Warranty period shall be 2 year on all work in place. The warranty will automatically be extended for an addition 2 years for any item or system, including mechanical or plumbing, having three or more calls within the initial 2 year warranty period. Extension shall be retroactive for any documented warranty call or request for any item in the contract.

Contractor shall prepare a Written Warranty identifying 2-Year Warranty with automatic extension stipulations. Warranty letter shall be on Contractor's letterhead with original signature (execution) and corporate seal affixed.

4.5.4 Warranty calls to the General Contractor or Subcontractor for repair or service shall be responded, with onsite service, within 24 hours, any day; or the Owner may seek other repair or services and back-charge the General Contractor and/or subcontractor for expenses. Rates charged for expenses or repairs, when back charged shall not be negotiable.

4.5.5 Additional provisions identified in Project Manual Section 01 74 00.

4.5.6 Lead in ANY domestic potable water system shall have ALL construction materials investigated by the Contractor and certified to the Owner with respect to materials being "Lead Free" and "Free of Lead" as defined in 1.1.6.4 herein. Letter of certification shall be provided by the Contractor on letterhead with original signature and corporate seal.

4.5.7 Contractor warrants that they will faithfully secure the Final Site Approval from Charles County Government at the end of the 1-year County Warranty period. Contractor shall provide a warranty letter to specifically address the willingness to correct ANY and ALL warranty items to the satisfaction of Charles County Government as cited in the 1-year warranty inspection as performed by the County.

4.6 TAXES

4.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

4.6.2 Materials which are incorporated into the work under this Contract are not exempt from Maryland State Sales or Use Tax.

4.7 PERMITS, FEES AND NOTICES

4.7.1 The Owner shall make application for and secure the building permit and development services permit, if required. The Contractor shall secure all other permits, licenses and inspections necessary for the proper execution and completion of the Work and certificates of inspection, occupancy, etc., as may be required by the authorities having jurisdiction over the Work. These shall be delivered to the Architect upon completion of the Work. The Contractor shall pay any and all fees imposed.

4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

4.7.3 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Architect in writing, and any necessary changes shall be accomplished by appropriate Modification.

4.7.4 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

4.8 ALLOWANCES

4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

- 4.8.2** Unless otherwise provided in the Contract Documents:
- .1** these allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes;
 - .2** the Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit (see 12.1.3.8 for clarification of overhead and profit), and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance;
 - .3** whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

4.9 SUPERINTENDENT

4.9.1 The Contractor shall employ **Two (2) competent superintendents** and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all 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 so confirmed on written request in each case.

4.9.2 The Contractor shall submit in writing to the Architect the qualifications of the proposed superintendent prior to the beginning of the construction and the proposed superintendent shall meet with the approval of the Owner and Architect. The superintendent shall be on the job at all times and shall not be responsible for any other project being constructed by the Contractor.

4.9.3 The superintendent shall assure that all workmen are using only specified and approved materials and are performing their work in accordance with requirements of the Contract Documents, whether employed by the Contractor or by Subcontractors. This responsibility shall not be delegated.

4.9.4 The two superintendents shall be utilized as: One superintendent focused on Site Work Construction and the second on Building Construction. The two shall both attend all construction meetings and separate meetings may be held for each superintendent's direct focus as needed. Both superintendents shall remain onsite till completion of ALL punch list work. Likewise, Contractor Project Management shall be supportive of both superintendents and have demonstrated expertise in both Building and site related projects, including requirements of local Authority Having Jurisdiction (AHJ).

4.9.5 The Superintendents shall have a full-time laborer (minimum of one) to assist in daily cleaning of the site and building to support a safe and clean environment (walks, roads, curbs, corridors, delivery access, vehicle traffic control, fire alarm clearing for student egress, halting traffic for buses and cars during arrival and dismissal of buses, marking of access thru phases of construction in existing building and similar activities to bridge construction to the active occupied site between the construction and community (public).

4.10 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.10.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.10.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

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

4.10.4 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

4.10.5 By preparing, approving and submitting Shop drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so with reasonable promptness, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

4.10.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.14 unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Architect's approval thereof.

4.10.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Architect on previous submittals.

4.10.8 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Architect as provided in Subparagraph 2.2.14. All such portions of the Work shall be in accordance with approved submittals.

4.11 USE OF SITE

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

4.11.2 The Contractor shall coordinate all of the Contractor's operations with, and secure approval from, the Owner before using any portion of the site.

4.12 CUTTING AND PATCHING OF WORK

4.12.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

4.12.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor his consent to cutting or otherwise altering the Work.

4.12.3 Where cutting of any structural member is required and such cutting is not indicated or specified, Contractor must first obtain Architect's written approval for each location. Contractor must also obtain written approval from the local building officials, if required by the local building codes.

4.12.4 The Contractor shall locate and arrange for the cutting of openings and chases through walls, floors and ceilings in advance of the need. The Contractor shall avoid unnecessary or excessive cutting. Where cutting of a finished surface is required, Contractor shall make cuts neatly along true lines so they will be concealed by finished work and where they will be "least conspicuous".

4.13 CLEANING UP

4.13.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

4.13.2 If the Contractor fails to clean up at the completion of the Work, the Owner may do so as provided in Paragraph 3.4 and the cost thereof shall be charged to the Contractor.

4.14 COMMUNICATIONS

4.14.1 The Contractor shall forward all communications to the Owner with a copy to the Architect.

4.15 ROYALTIES AND PATENTS

4.15.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Architect.

4.16 INDEMNIFICATION

4.16.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Architect and their agents and employees from and against all claims, damages, losses and

expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 4.16.

4.16.2 In any and all claims against the Owner or the Architect or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.16 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.16.3 The obligations of the Contractor under this Paragraph 4.16 shall not extend to the liability of the Architect, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor does not include any separate contractor or his Subcontractors.

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

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

5.2.1 Within ten (10) days after the Notice of Award, the Contractor shall submit in writing to the Owner, through the Architect, the names of those Subcontractors and persons or organizations (including manufacturers who are to furnish materials or equipment fabricated to a special design) proposed for use in the early stages of construction for acceptance. Prior to application for first payment, a complete list of all proposed Subcontractors shall be submitted for acceptance by the Owner and the Architect. The Architect shall promptly notify the Contractor in writing if either the Owner or the Architect, after due investigation, has reasonable objection to any proposed Subcontractor and does not accept him. Failure of the Owner or Architect to make objection promptly to any proposed Subcontractor shall constitute notice of no reasonable objection.

5.2.1.1 Each Subcontractor may be required to furnish the Owner, in duplicate, through the Architect, proof of his financial stability and experience to perform the particular work in which he will be engaged.

5.2.3 The Contractor shall not contract with any such proposed person or entity to whom the Owner or the Architect has made a

reasonable objection under the provisions of subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom the Contractor has a reasonable objection.

5.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected without written approval by the Owner, and the Architect.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and the Architect. Said agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractors.

5.4 COOPERATION AMONG SUBCONTRACTORS

5.4.1 Each Subcontractor shall coordinate his work with adjacent work and cooperate with other trades so as to facilitate general progress of work. Each trade shall afford other trades every reasonable opportunity for installation of work and for storage of materials. Each Subcontractor shall thoroughly examine all existing and connecting work before starting work under his own trade section and shall report to the Contractor, any conditions which would impair the excellence of any work to be performed under this Contract. In absence of any such report, each Subcontractor, upon the beginning of his work, will be considered as having accepted all preceding work, and as having waived all claims to the contrary.

ARTICLE 6 WORK BY OWNER OR BY SEPARATE CONTRACTORS

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

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents. This paragraph does not contemplate any right to recovery of delay damages, and the terms of Paragraph 17.5 shall in no way be negated or limited.

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

6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate contractor with the Work of the

Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractor's reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Architect any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate contractors' work as fit and proper to receive his Work, except as to defects which may subsequently become apparent in such work by others.

6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor. This paragraph does not contemplate any right to recovery of delay damages, and the terms of Paragraph 17.5 shall in no way be negated or limited.

6.2.4 Should the Contractor wrongfully cause damage to the work or property of the Owner or to other work on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5.

6.2.5 Should the Contractor wrongfully cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense and if any judgement or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court costs which the Owner has incurred.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.13, the Owner may clean up and charge the cost thereof to the contractors responsible therefore as the Architect shall determine to be just.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The Contract shall be governed by the laws of the State of Maryland.

7.2 SUCCESSORS AND ASSIGNS

7.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

7.3 WRITTEN NOTICE

7.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to

an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

7.3.2 All proposals, approvals, instructions, requests, claims, demands and other notices shall be made in writing. A fax communication or electronic mail shall not constitute such a writing or written notice.

7.4 CLAIMS FOR DAMAGES

7.4.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

7.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.5.1 The Contractor shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Sum as security for the faithful performance of the Contract and also a Labor and Material Payment Bond in an amount not less than one hundred percent (100%) of the Contract Sum or in penal sum not less than that prescribed by State, Territorial or local law, as security for the payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with this Contract. The Performance Bond and Labor and Material Payment Bond shall be delivered to the Owner not later than ten days after the date of the Notice of Award of the Contract and prior to the commencement of the Work. The Bonds shall be executed on the samples included in the Project Manual. The Owner shall have the absolute right to reject any surety

7.6 RIGHTS AND REMEDIES

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

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

7.7 TESTS

7.7.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall hire an Independent Third Party Inspection and Testing Agency approved by the jurisdiction and MUST be a licensed Professional Engineer in State of Maryland or a Licensed Architect in the State of Maryland. The Contractor shall bear all costs of such inspections, tests or approvals to satisfy the contract documents and local Authority(ies) Having Jurisdiction (AHJ). ~~Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.~~ The Contractor shall give the Architect and Owner timely notice of its readiness so the Architect may observe such inspection or testing.

7.7.2 If the Architect determines that any Work requires special inspection, testing, or approval which Subparagraph 7.7.1 does not include, he will, upon written authorization from the Owner, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.7.1. If such

special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Architect's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

7.7.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the Architect and Authorities Having Jurisdiction (AHJ).

7.7.4 If the Architect is to observe the inspections, tests or approvals required by the Contract Documents, he will do so promptly and, where appropriate and practicable, at the source of supply or on site.

7.8 INTEREST

7.8.1 No interest shall be paid by the Owner to the Contractor under the Contract Documents.

7.9 DISPUTES

7.9.1 Any disputes between parties to the Contract which do not reach amicable settlement shall be tried exclusively in State Civil Court. The parties waive any right to trial by jury in any civil case. The Contractor shall carry on the work and maintain the Progress Schedule, during any disputes, unless otherwise directed by the Owner.

7.10 UTILITIES AND EXISTING CONDITIONS

7.10.1 The Contractor shall verify locations of all utilities before starting work; including field location of Owner utilities and structures, municipal utilities and structures and other local utility activities. This location prior to construction may require the contractor to perform hand excavations, camera use (internal to utilities) as well as electronic detection and similar devices – All at the Contractors expense. This effort MUST be identified on the Construction Schedule to be fully accountable.

ARTICLE 8 **TIME**

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein.

8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Architect when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended.

8.1.3.1 Substantial completion will have been reached when, in the opinion of the Architect, the work is 100 percent (100%) completed with the exception of a few minor items delayed for reasons beyond the Contractor's control, and completion of the Architect's Punch List. However, items late in completion because of the Contractor's negligence or lack of foresight will not be deemed as valid exceptions.

8.1.3.2 Architect's Punch List shall be minor items only, and are therefore limited to 4 items of correction or completion within any room or space or exterior area. Therefore, the expected Punch List of Minor Items shall be limited to the number of rooms or spaces multiplied by a maximum of four (4) items to complete or correct; otherwise, the space is

not Substantially Complete. A room or space shall be determined as a location within the building that has a room number or space number assigned on the contract documents.

Other remaining work, other than Minor items, shall automatically prevent the designation of 'Substantially Complete'.

8.1.3.3 Final Completion shall require specialized Training for owner Staff as well as complete Operating and Maintenance (O & M) Manuals given to the Owner prior to being eligible for Substantial Completion.

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

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Architect, or by any employee of either, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation (must be noted with bid), ~~adverse weather conditions not reasonably anticipatable~~, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the Owner pending litigation or by any other cause which the Architect determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. No Change Order extending the Contract Time for any such reason except for changes ordered in the Work shall result in any increased payments to the contractor for overhead, extended overhead or any other amounts of like nature.

8.3.1.1 Weather delays should be anticipated at a rate of four (4) Work Days (Work Days defined as Monday to Friday) per month which should be capable of make-up by utilizing longer days and weekend days. Extended weather events, exceeding 5 continuous days, maybe eligible for time extension when proven impact to schedule and work-force cannot be adjusted with the anticipated 4 weather delay days and longer hours per day as noted herein.

8.3.1.2 Site work delays due to weather as noted in paragraph 8.3.1.1 may be granted some time relief per project Phase, BUT, overall project schedule must be on-time and on-schedule to accommodate public school bus schedules and staff work days as published in the annual 'Parent Handbook/Calendar' published by Charles County Public Schools. ANY site project with a contract exceeding 365 days of duration shall not be eligible for any time extensions due to the availability of a variety work opportunities throughout the year.

8.3.1.3 Any extension for time due to weather is only eligible for time extension and no additional general conditions. Further, the time extensions are only applicable for project under 365 calendar days of duration, (or a Phase under 365 days for Phased projects).

8.3.1.4 Weather delays as expected on average 4 days per month, weather delays beyond the four days can be requested; however, they will only be evaluated for days where the National Oceanic and Atmosphere Administration (NOAA) has logged a minimum of 0.5-inch (1.2") liquid participation, 1" or more of solid snow or ice pellets, or temperatures below 30-degrees for an entire 24-hour period, for the specific site location. These days are only counted when the event is during a work week (Monday to Friday) unless weather event is an extended event per 8.3.1.1 above. FURTHER, these conditions will only be applicable for work impacted by the event; work under a roof or roof-

like structure (an area which can be tented, protected and heated) will not be eligible for extensions.

8.3.1.5 Therefore, weather delays may be assigned separately to contracts where the site work is impacted separately from Building related work. The intent here is to maintain the contract schedule for occupied spaces followed by site work, which must endeavor to meet school opening and bus schedules. The contractor is advised to plan weather delay days into the Construction Schedule, for each Phase of work and each type of work (Building or Site).

8.3.2 Any claim for extension of time shall be made in writing to the Architect not more than twenty days after the commencement of the delay; otherwise, it shall be waived. In the case of a continuing delay, only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.

8.3.3 If no agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.2.8 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after written request is made for them, and not then unless such claim is reasonable.

8.3.4 No extensions for time, time delays or general conditions shall be accepted based on adverse weather since the contract is based on calendar days; that allows for weekend and evening work to complete work in the contracted time.

8.3.5 If necessary to reach a proper stopping place in any portion of the work or to complete work within Contract limit time, Contractor shall work overtime both his forces and forces of his Subcontractors without addition to the Contract Sum. Contractor shall be responsible for all incidental cost in connection with such overtime work.

8.3.6 If work falls behind schedule, as determined by the Architect, the Contractor shall provide at his own expense, additional labor and/or equipment, overtime pay, etc., as required to overcome delay.

8.3.7 The Contractor shall substantially complete the COMPLETE project no later than **940 calendar** days from the date of the Notice to Proceed. From payments due the Contractor, the Owner will deduct, as liquidated damages, a sum of One Thousand Five Hundred dollars **(\$1,500.00)** for each calendar day of delay beyond the above stated Completion Date unless the Contract Time has been extended by Change Order as specified in Subparagraph 8.3.1. THIS PROVISION IS EXTENDED TO EACH PHASE OF CONSTRUCTION SINCE THIS IS A PHASED OCCUPIED CONSTRUCTION.(See Bid Proposal Form, Paragraph '4-Contract Time' for Phases Schedule.)

8.3.8 The Contractor shall complete the Punch List of the Work within thirty (30) consecutive calendar days from the date of issue of the Punch List at Substantial Completion for each Phase. Should the work not be completed within such time, it is understood and agreed that the Owner will deduct from payments due the Contractor, as liquidated damages, not as a penalty, the sum of Two Hundred fifty dollars **(\$250.00)** for each calendar day of delay until the Punch List is completed.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

9.2.1 Before the First Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used only as a basis for the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date for each progress payment established in the Owner-Contractor Agreement, the Contractor shall submit to the Architect an itemized Application for Payment, notarized and, supported by such data substantiating the Contractor's right to payment as the Owner or the Architect may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. Senate Bill 247 which amended Article 90, Section 11 of the Maryland Code requires that a General Contractor, prior to obtaining a Progress Payment on any public job, must certify, in writing, that he has paid for previous Progress Payments and will pay from the current Progress Payment his subcontractors and suppliers in accordance with Contractual arrangements with them.

To this effect, the following statement shall be added to each Application for Payment: *"I/We certify the above estimates and that timely payments have been (except initial submission), and will be, made to suppliers and subcontractors on this project, as requisitioned payments are received, and in accordance with our contracts."*

9.3.1.1 Each month, the Owner will make payments on account of the Contract as follows: ninety-five percent (95%) of the value of the work completed up to the 1st day of the month, as approved by the Architect and the Owner's representative, including the value of materials suitably stored at the job site (or other approved locations in accordance with subparagraph 9.3.2), less the aggregate of any previous payments.

9.3.1.2 At the time the Contractor is preparing each monthly requisition, it will be required that, upon completion of his rough pencil draft covering a payment request, and prior to preparing the final draft, the rough draft will be reviewed by the Architect, Owner's representative, and the Contractor at the progress meeting immediately preceding due date for submitting each requisition. Agreement shall be reached among these three prior to the requisition being forwarded formally to the Architect for subsequent transmittal to the Owner for payment.

9.3.1.3 Each request for payment shall be prepared by the Contractor on an "application for payment" form contained in the project manual. Each such requisition shall bear the signature of the Contractor, Architect and Owner's representative; and shall be notarized.

9.3.1.4 Contractor shall present the originals (total of five) for review and acceptance by the Architect. The Architect shall deliver the originals to the Owner for processing.

9.3.2 When the Application for Payment includes material or equipment stored off the Job Site, the application for payment shall be accompanied by a certified statement including:

- a. Description of items
- b. Bills of Sale
- c. Location of storage
- d. An insurance company certificate stating that the item is currently covered by all contractual requirements, including liability and fire insurance.
- e. A statement that the item or any part thereof will not be installed in any other construction project other than Work under this Contract.

9.3.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will, within fourteen days after the receipt of the Contractor's Application for Payment, either issue a Certificate for Payment to the Owner, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor in writing his reasons for withholding a Certificate as provided in Subparagraph 9.6.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on his observations at the site as provided in Subparagraph 2.2.3 and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that the Contractor is entitled to payment in the amount certified. However, by issuing a Certificate for Payment, the Architect shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

9.5 PROGRESS PAYMENTS

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

9.5.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

9.5.3 The Architect may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Architect on account of Work done by such Subcontractor.

9.5.4 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

9.5.5 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6 PAYMENTS WITHHELD

9.6.1 The Architect may decline to certify payment and may withhold his Certificate in whole or in part, to the extent necessary reasonably to protect the Owner, if in his opinion he is unable to make representations to the Owner as provided in Subparagraph 9.4.2. If the Architect is unable to make representations to the Owner as provided in Subparagraph 9.4.2 and to certify payment in the amount of the Application, he will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which he is able to make such representations to the Owner. The Architect may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously

issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- .1** defective work not remedied,
- .2** third party claims filed or reasonable evidence indicating probable filing of such claims,
- .3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
- .4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
- .5** damage to the Owner or another contractor,
- .6** reasonable evidence that the Work will not be completed within the Contract Time, or
- .7** persistent failure to carry out the Work in accordance with the Contract Documents.

9.6.2 When the above grounds in Subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them.

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within fourteen days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within fourteen days after the date established in the Contract Documents any amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and the Architect, stop the Work until payment of the amount owing has been received.

9.8 SUBSTANTIAL COMPLETION

9.8.1 When the Contractor considers that the Work, or a designated portion thereof, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for submission to the Architect a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Architect on the basis of an inspection determines that the Work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion which: shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.2 Substantial Completion MUST include all Operation and Maintenance Manuals and Training to Owner's Staff prior to acceptance of Substantial Completion such that the facility can be properly operated to avoid warranty issues with various manufacturers.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Architect's final Certificate for Payment will constitute a further representation that

the conditions precedent to the Contractor being entitled to final payment as set forth in Subparagraph 9.9.2 have been fulfilled.

9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, (3) other data establishing payment or satisfaction of all such obligations, such as receipts, to the extent and in such form as may be designated by the Owner, (4) Complete satisfaction of local authorities for inspections, as-builts, certifications and other items as required to achieve complete Use & Occupancy certificate AND Final Clear Acceptance of the Site by the County; (5) All Training due Owner staff and specialized Maintenance Training has been scheduled and/or attended, (6) ALL spare parts and materials provisions (including electronic programs) have been delivered and (7) ALL electronic and paper As-Builts and submittal data from all work and construction received by Owner. If any claim against the Owner for which the Contractor may be liable remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such claim, including all costs and attorneys' fees.

9.9.2.1 The final payment to the Contractor shall not become due until all requirements covered under Section 01 77 00 and 01 78 00, Project Closeout, AND ANY and ALL trainings having been completed such that the Owner can properly maintain and operate the Facility have been certified by the Architect.

9.9.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in Paragraph 7.5, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.9.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- .1 unsettled liens,
- .2 faulty or defective Work appearing after Substantial Completion,
- .3 failure of the Work to comply with the requirements of the Contract Documents, or
- .4 terms of any special warranties required by the Contract Documents.

9.9.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

10.2 SAFETY OF PERSONS AND PROPERTY

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

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

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss. All work on this Project shall be accomplished in strict accordance with the most recent regulations promulgated by the MOSHA.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Owners and users of adjacent utilities.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel. When the use of hazardous materials or equipment or unusual methods are necessary, the Contractor shall give the Owner reasonable advance notice.

10.2.5 The Contractor shall promptly remedy all damage or loss (other than damage or loss insured under Paragraph 11.3) to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable wholly to the acts or omissions of the Owner, the Architect the Construction Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not at all attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 4.16.

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

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

10.2.8 Students and other school personnel, as well as the general public, may be on the project site and in the immediate vicinity of the Work indicated. The Contractor shall provide suitable barriers, warning signs and divides and take other measures that may be required to protect students, and other persons, and vehicles in the vicinity of the Work. The Contractor is expected to occupy areas defined by the site plans. The limits shall be protected by the installation of a 6-foot (or 8-foot) tall temporary fence with post set in the ground. (or -post in concrete surface supports). Provide an opaque windscreen or similar material between all contractor areas adjacent to the students and staff, which shall be constructed as part of this contract as part of the Contractor's mobilization period.

It shall be the Contractor's responsibility to stop any operations immediately which could be considered as dangerous to any person in the vicinity of the Contractor's operations at the site. The Contractor shall immediately advise the Owner and the Architect of the situation which caused the Work to be stopped so that administrative steps can be taken

by the Owner to prevent reoccurrence of the situation.

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work. The Contractor shall provide an emergency number(s) whereby he can assure that a responsible person-in-charge can be reached should an emergency occur after hours.

10.4 WEATHER PROTECTION

10.4.1 Contractor shall protect excavation, trenches and buildings from damage by rainwater, spring water, ground water, backing up of drains or sewers and water from any other source. Contractor shall maintain excavation, trenches and floor below grade free from water. Contractor shall furnish pumps, hoses and other equipment required to provide proper drainage.

10.4.2 Contractor shall provide constant protection against rain, snow, storms, frost, heat and sun so as to maintain Contract work, materials, apparatus, and fixtures free from injury and damage. At end of each day's work, Contractor shall cover work likely to be damaged.

10.4.3 During cold weather, Contractor shall protect work from freezing by methods approved by the Architect. If low temperatures make it impossible to continue operations safely in spite of cold weather precautions, Contractor shall cease work and notify the Architect.

10.4.4 Contractor shall remove work damaged by failure to provide specified weather protection and replace with new work at no extra cost to the Owner.

ARTICLE 11 INSURANCE

11.1 GENERAL INSURANCE REQUIREMENTS

11.1.1 The Contractor shall not commence Work until the Contractor has obtained at the Contractor's own expense all of the insurance as required hereunder and such insurance has been approved by the Owner; nor shall the Contractor allow any Subcontractor to commence work on any subcontract until all insurance required of the Subcontractor has been so obtained and approved by the Contractor. Approval of insurance required of the Contractor will be granted only after submission to the Owner of original certificates of insurance signed by authorized representatives of the insurers or, at the Owner's request, certified copies of the required insurance policies. Additionally, the Contractor must submit with the original certificates or certified policies, the enclosed Contractor's Insurance Checklist form completed by the Contractor and each of the Contractor's Insurance Agents or Contractor's Insurers (one form for each agent or insurer if multiple agents or insurers write the Contractor's coverages).

11.1.2 Insurance as required hereunder shall be in force throughout the term of the Contract and for two years after final acceptance of the Project by Owner in accordance with 11.3.1.1.4. Original certificates signed by authorized representatives of the insurers or, at the Owner's request, certified copies of insurance policies, evidencing that the required insurance is in effect, shall be maintained with the Owner throughout the term of the Contract and for two years after final acceptance of the Project by Owner.

11.1.3 The Contractor shall require all Subcontractors to maintain during the term of the Contract commercial general liability insurance, business auto liability insurance, and workers compensation and employers liability insurance, and umbrella excess or excess liability insurance to the same extent required of the Contractor in 11.3.1.1, 11.3.1.2 and 11.3.1.3 unless any such requirement is expressly waived or amended by the Owner in writing. The Contractor shall furnish Subcontractors' certificates of insurance to the Owner immediately upon

request.

11.1.4 All insurance required hereunder shall include the following provision: "It is agreed that this Policy is not subject to cancellation or reduction in coverage until sixty (60) days prior written notice has been given to the Architect and the Owner."

The phrases "endeavor to" and "... but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" are to be eliminated from cancellation provisions of standard ACORD certificates of insurance.

11.1.5 The requiring of any and all insurance as set forth in these Specifications, or elsewhere, shall be in addition to and not in any substitution for all the other protection provided under the Contract Documents. No acceptance and/or approval of any insurance by the Owner shall be construed as relieving or excusing the Contractor, or the Surety of his Bond, from any liability or obligation imposed upon either or both of them by the provisions of the Contract Documents.

11.1.6 The Contractor covenants to save, defend, keep harmless and indemnify the Owner and all of its elected or appointed officials, agents and employees for and against any and all claims, loss, damage, injury, cost (including court costs and attorney's fees), charge, liability or exposure, however caused, resulting from or arising out of or in any way connected with the Contractor's performance or non-performance of the terms of the Contract Documents or its obligations under the Contract. This indemnification shall continue in full force and effect until the Contractor completes all of the Work required under the Contract, except that the indemnification shall continue for all claims involving products or completed operations after final acceptance of the Work by the Owner for which the Owner gives notice to the Contractor after final acceptance of the Work.

11.1.7 The Contractor shall be responsible for the Work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances and property of any and all description used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from the action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted Work, until final acceptance of the Work by the Owner.

11.1.8 Insurance coverage required in the Construction Documents shall be in force throughout the contract term. Should the Contractor fail to provide acceptable evidence of current insurance within three days of written notice at any time during the contract term, the Owner shall have the absolute right to immediately terminate the Contract, without any further obligation to the Contractor, and the Contractor shall be liable to the Owner for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.

11.1.9 Contractual and other liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the Owner from supervising or inspecting the Project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the Subcontractors and any persons employed by the Subcontractor.

11.1.10 Nothing contained in the Contract Documents shall be construed as creating any contractual relationship between any Subcontractor and the Owner. The Contractor shall be fully responsible to the Owner for the acts and omissions of the Subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

11.1.11 Precaution shall be exercised by the Contractor at all times for the protection of persons, (including employees) and property. All existing real or personal property, utilities or services to, or of, the Owner, which are not to be demolished, altered or impaired as part of the Contractor's undertaking shall be protected against damage or interruption of service at all times by the Contractor and its Subcontractors during the term of the Contract, and the Contractor shall

be held responsible for any damage to property occurring by reason of its operation on the property.

11.1.12 The Contractor shall purchase and maintain all required insurance coverages from insurers authorized to do business in the State of Maryland and acceptable to the Owner. The insurers must also have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest evaluation by A. M. Best Company, unless the Owner grants specific approval for an exception. The Owner hereby grants specific approval for the acquisition of workers compensation and employers liability insurance from the Injured Workers Insurance Fund of Maryland.

11.1.13 Any deductibles or retentions in excess of \$10,000 shall be disclosed by the Contractor, and are subject to Owner's written approval. Any deductible or retention amounts elected by the Contractor or imposed by the Contractor's insurer(s) shall be the sole responsibility of the Contractor.

11.1.14 Any and all return premiums and/or dividends for insurance or coverage directly charged to the Owner by the Contractor in connection with this Contract shall belong to and be payable to the Owner.

11.1.15 If the Owner is damaged by the failure or neglect of the Contractor to purchase and maintain insurance as described and required herein, without so notifying the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance, or solely at the Owner's option, the Owner may self-insure the Owner's liability exposures.

11.3 CONTRACTOR'S LIABILITY INSURANCE

11.3.1 The Contractor shall purchase and maintain the following insurance coverages which will insure against claims 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. Insurance shall be written for not less than the limits specified below or required by law, whichever is greater.

11.3.1.1 Commercial general liability insurance or its equivalent for bodily injury, personal injury and property damage including loss of use, with minimum limits of

- \$2,000,000 per occurrence;
- \$2,000,000 personal and advertising injury;
- \$2,000,000 general aggregate; and
- \$2,000,000 products/completed operations aggregate.

This insurance shall include coverage for all of the following:

- .1 General aggregate limit applying on a per project basis;
- .2 Liability arising from premises and operations;
- .3 Liability arising from the actions of independent contractors;
- .4 Liability arising from products and completed operations with such coverage to be maintained for two years after completion of the Work;
- .5 Contractual liability including protection for the Contractor from bodily injury and property damage claims arising out of liability assumed under this Contract;
- .6 Personal injury liability including coverage for offenses related to employment; and
- .7 Liability arising from the explosion, collapse, or underground (XCU) hazards.

11.3.1.2 Business auto liability insurance or its equivalent with a minimum limit of \$2,000,000 per accident and including coverage for all of the following:

- .1 Liability arising out of the ownership, maintenance or use of any auto; and
- .2 Automobile contractual liability.

11.3.1.3 Workers compensation insurance, or its equivalent, with

statutory benefits as required by Maryland law or the U.S. Longshoremen's and Harbor Workers' Compensation Act or other laws as required by labor union agreements, including standard "other states" coverage; employer's liability insurance, or its equivalent, with minimum limits of

- \$1,000,000 each accident for bodily injury by accident;
- \$1,000,000 each employee for bodily injury by disease; and
- \$1,000,000 policy limit for bodily injury by disease.

11.3.1.4 Total limit requirements of subparagraphs 11.3.1.1, 11.3.1.2 and 11.3.1.3 may be met by a combination of primary and umbrella excess liability coverages.

11.3.1.5 Owner (Board of Education of Charles County) and its elected and appointed officials, officers, consultants, agents and employees shall be named as additional insureds on the Contractor's commercial general liability insurance and umbrella excess or excess liability insurance policies with respect to liability arising out of the Contractor's products, installation, and/or services provided under this Contract. Such coverage shall extend to cover the additional insured(s) for liability arising out of the following:

1. On-going operations; and
2. Products and completed operations.

The commercial general liability policy and the umbrella excess liability or excess liability policies, if required herein, must include additional insured language, which shall afford liability coverage for the exposures listed above in 1. and 2.

11.3.1.6 Insurance or self-insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees under any Contractor's liability insurance or self-insurance required herein, including, but not limited to, umbrella and excess liability or excess liability policies, shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance or self-insurance. (Any cross suits or cross liability exclusion shall be deleted from Contractor's liability insurance policies required herein.)

11.3.1.7 Insurance or self-insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees as specified herein shall be primary, and any other insurance, self-insurance, coverage or indemnity available to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees shall be excess of and non-contributory with insurance or self-insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees as specified herein.

11.3.2 If any liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions:

- .1 The Contractor shall agree to provide certificates of insurance evidencing the above coverages for a period of two years after final payment for the Contract. Such certificates shall evidence a retroactive date no later than the beginning of the Work under this Contract; or
- .2 The Contractor shall purchase an extended (minimum two years) reporting period endorsement for each such "claims made" policy in force as of the date of final acceptance and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the beginning of the Work under this Contract.

11.4 PROPERTY INSURANCE (Builders Risk)

11.4.1 The Owner shall purchase and maintain builders risk insurance on a replacement cost basis with a limit at least equal to the initial Contract Sum. This insurance shall be maintained until final acceptance of the Project by the Owner or until no person or entity other

than the Owner has an insurable interest in the covered property, whichever is earlier. This builder's risk insurance shall include the interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Project.

11.4.2 Insurance shall be on an "all-risk" or equivalent policy form and shall insure against the perils of fire, extended coverage, theft, vandalism, malicious mischief, collapse and windstorm. Coverage is to apply for debris removal including demolition occasioned by a covered loss. This insurance shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such covered loss. Coverage for other perils such as flood and earthquake or for loss caused by the enforcement of any applicable ordinance or law shall not be required unless otherwise provided in the Contract.

11.4.3 This builder's risk insurance shall cover all of the following types of property:

1. All structures to be constructed, under construction, and/or already constructed;
2. All materials, equipment, machinery and supplies which are to be incorporated into the Project;
3. Temporary structures of any nature whatsoever; and
4. Underground property, including but not limited to, foundations, pump stations, pumps, pipes, drains, tanks and connections.

11.4.4 The Contractor shall be responsible for payment of the \$5,000 deductible applicable under this builders risk insurance, boiler and machinery insurance or other property insurance applicable to the Project.

11.4.5 Unless otherwise provided in the Contract Documents, this builder's risk insurance shall cover materials to be incorporated into the Project which are off the site, and also such materials in transit **as long as such materials have been paid for by Owner.**

11.4.6 This builders risk insurance shall insure (or shall be amended to insure) against loss or damage caused by the boiler and machinery perils with limits and scope of coverage that are deemed by the Owner to be satisfactory. This insurance shall also include the interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Project.

11.4.7 The Owner and Contractor waive all rights against (1) each other and the Subcontractors, Sub-subcontractors, agents and employees of each other, and (2) the Architect, the Architect's Consultants and separate contractors, if any, and any of their Subcontractors, Sub-subcontractors, elected and appointed officials, officers, agents, employees, and consultants of any of them, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph 11.4 or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee. The foregoing waiver afforded the Architect, his agents and employees shall not extend to the liability imposed by Subparagraph 4.16.3. The Owner or the Contractor, as appropriate, shall require of the Architect, separate contractors, Subcontractors and Sub-subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of all other parties enumerated in this Subparagraph 11.4.7. The policies shall provide such waivers of subrogation by endorsement or otherwise.

11.4.8 Any loss covered under this builders risk insurance, boiler and machinery insurance or other property insurance applicable to the Work shall be payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to any mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.4.9 The Owner, as fiduciary, shall have the right to adjust and settle a loss with the insurers.

11.4.10 Partial occupancy or use in accordance with the provisions of the Contract that pertain to partial occupancy or use shall not commence until the builders risk insurer has granted permission by endorsement or otherwise for the Owner to partially occupy or use any

completed or partially completed portion of the Work at any stage of construction. The Owner and Contractor shall take reasonable steps to obtain such permission.

11.4.11 The insurance required by this Paragraph 11.4 is not intended to cover machinery, tools or equipment owned or rented by the Contractor, or its Subcontractors, which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor and its Subcontractors shall, at their own expense, purchase and maintain property insurance coverage for owned, leased or rented machinery, tools or equipment. The Contractor, and its Subcontractors, hereby waive all rights against the Owner and its elected and appointed officials, officers, agents, employees and consultants for property damage to or loss of use of such machinery, tools or equipment to the extent that such property damage or loss of use is covered by the Contractor's or Subcontractor's property or equipment floater insurance or other similar property insurance maintained by the Contractor or its Subcontractors. The policies shall provide such waivers of subrogation by endorsement or otherwise.

11.5 LOSS OF USE INSURANCE

11.5.1 The Owner, at his option, may purchase and maintain such insurance as will insure him against loss of use of this property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of this property, including consequential losses due to fire or other hazards however caused, to the extent covered by insurance under this Paragraph 11.5.

ARTICLE 12 CHANGES IN THE WORK

12.1 CHANGE ORDERS

12.1.1 A Change Order is a written order to the Contractor signed by the Owner and the Architect, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time.

12.1.2 Should it be desired at any time, or times, during the progress of the work to make any alterations or changes, or to add to or delete work, the Owner shall have the undisputed right, without invalidating the Contract, to make such changes, omissions, additions or alterations by written order.

12.1.2.1 A written request for a change in the work may be made by the Owner, the Architect or the Contractor, but only the Owner shall authorize and approve the change.

12.1.2.2 The change will be issued in the form of a written "change order form" signed by the Owner and the Contractor, which authorizes the change in the work, indicates the mutually agreed upon price which shall be added to or deducted from the Contract Sum and the extent to which the Contract Time shall be increased or decreased.

12.1.2.3 The Contractor shall furnish five copies of a fully itemized breakdown of the quantities and prices used in computing the value of any change requested to the Owner or Architect.

12.1.2.4 For all work to be performed by a Subcontractor, the Contractor shall furnish the Subcontractor's itemized proposal, which shall contain original signature by an authorized representative of the subcontracting firm. If requested by the Owner or Architect, proposals from suppliers or other supporting data to substantiate the Contractor's cost shall be furnished.

12.1.2.5 All proposals and breakdowns shall be submitted promptly.

12.1.3 When changes, alterations, deductions or additions are so ordered, the value of such work will be determined in the following ways:

- .1 By means of a lump sum price agreed to by both the Owner and the Contractor or;
- .2 By application of unit prices stated in the Contract

documents or;

.3 If job conditions or the extent of the change prohibit the use of either (1) or (2), a price arrived at by performing the work on a cost plus not-to-exceed basis.

.4 If a change involves merely a credit, the Contract Sum will be reduced by the amount it would have cost the Contractor if the omitted item or work had not been eliminated, including overhead and profit as specified in clauses (6) and (7) below.

.5 If a change involves both an extra and a credit, both sums shall be shown and the two sums balanced to determine the adjusted total cost or credit. No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any changes in the work.

.6 Unless otherwise specified, the allowable mark-up for combined overhead and profit for work performed by the Contractor with his own forces will be based on the monetary value of the work in accordance with the following schedule:

| <u>Value of work</u> | <u>Combined overhead and profit</u> |
|----------------------|-------------------------------------|
| \$0 - \$10,000 | 15% |
| \$10,001 - \$25,000 | 10% |
| over \$25,000 | negotiated but not more than 8% |

.7 For work performed by a Subcontractor with the Subcontractor's own organization, the percentages for combined overhead and profit will be as outlined in (6). On work partly or solely performed by a Subcontractor, the Contractor will be allowed eight percent (8%) of the total cost of the Subcontractor's labor, materials, overhead and profit only.

.8 The allowable percentages for overhead and profit are deemed to include, but not be limited to, cost of bond, insurance, job supervision and field office expense required by the Contract, Home Office expenses, employee benefits, expenses for timekeepers and clerks, cost of correspondence of any kind and insurance not specifically mentioned herein, all expenses in connection with the maintenance and operation of the field office, use of small tools, cost of small trucks generally used for transporting either workmen, materials, tools or equipment to job location, incidental job burdens and all such administrative costs related to the change.

.9 The cost of foremen and superintendents may be added only when the Change Order makes necessary the hiring of additional supervisory personnel or makes their employment for time additional to that required by the basic contract.

12.1.4 When the Contractor and the Owner shall fail to agree upon a lump sum price or method as outlined in 12.1.3, The Owner shall have the right to issue an order for the work to be accomplished on a time and material basis and a correct account shall be kept by the Contractor and approved by the Owner and/or the Architect of the actual cost of all labor and materials as directed by the Owner and/or the Architect to which shall be added percentage allowances for overhead and profit as stated in paragraph 12.1.3. Receipted invoices shall be submitted to the Owner to validate the cost of all shop fabricated material and cost of all other materials supplied. Certified payrolls shall be submitted for labor costs.

12.1.4.1 The following shall apply to Change Orders:

.1 No work on proposed changes will be started until the estimate of proposed changes has been approved by the Architect and Owner.

.2 Where an emergency requires that changes in Contract work be done prior to approval of the Change Order Estimate, Contractor will be issued a Proceed Order and

must maintain an accurate account of all labor and material involved in the change.

.3 All such time and material is subject to verification by Architect's and Owner's representative. Contractor will notify Architect when work on changes is to start and when completed.

.4 To receive full recognition, labor assigned to Contract changes must, insofar as possible, work continuously on the change, rather than interchanging between Contract work and the change.

12.1.5 On all work defined in article 12, neither the Contractor nor the Subcontractor will be allowed any expenses, overhead or profit for the employment of another Subcontractor to perform work for him.

12.1.6 Except when directed by Architect or Owner, or acting himself in an emergency, Contractor shall make no change in work without written instructions from Architect. Work which Contractor claims is a deviation from Contract shall not be performed without written authorization of Architect, except on Contractor's responsibility.

12.2 CONCEALED CONDITIONS

12.2.1 Should concealed conditions be encountered in the performance of the Work below the surface of the ground, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground, or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those which could reasonably be anticipated or ordinarily encountered or generally recognized as inherent in work of the character provided for this Contract, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon claim by either party made within twenty days after the first observance of the conditions. Written notice of the concealed condition must be made and delivered to the Owner within 24 hours of discovery, and before any change is made to the condition, or any claim relating to that changed condition is waived.

12.3 CLAIMS FOR ADDITIONAL COST

12.3.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Architect written notice thereof within twenty days after the occurrence of the event giving rise to such claim, including weather delay claims.. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such claim shall be valid unless so made. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the Architect. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

12.3.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Subparagraph 2.2.8, (2) any order by the Owner to stop the Work pursuant to paragraph 3.3 where the Contractor was not at fault, (3) any written order for a minor change in the Work issued pursuant to Paragraph 12.4, or (4) failure of payment by the Owner pursuant to Paragraph 9.7, the Contractor shall make such claim as provided in Subparagraph 12.3.1. This paragraph does not contemplate any right to recovery of delay damages, and the terms of Paragraph 17.5 shall in no way be negated or limited.

12.3.3 Notwithstanding anything in this Contract to the contrary, it is specifically understood and agreed that if the Contractor believes that it has performed, or will be required to perform, work which is in addition to, or different from the Work required by the Contract, or if it has performed, or will be required to perform work in a manner different than that which was required by the Contract, the Contractor must give written notice to the Owner with in 48 hours of the time that the reason for the different work, or different manner of performing the work is discovered. The

notice must include the nature of the change to the work, or manner of work, the affected area(s) and the Contractor's estimate of the impact upon time of performance and cost of performance. If no such notice is made, the Contractor agrees that it will not be entitled to any additional compensation or for a time extension. Further, if at any time the Contractor revised a timely estimate as to the impact upon time of performance and cost of performance, it must notify the Architect the Construction Manager and the Owner in writing within 48 hours of the time that it becomes aware of any facts which would cause it to make such a revision, or it shall waive same. This paragraph does not contemplate any right to recovery of delay damage, and the terms of 17.5 shall in no way be negated or limited.

12.4 MINOR CHANGES IN THE WORK

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

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the Work should be covered contrary to the request of the Architect or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for his observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Architect has not specifically requested to observe prior to being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate contractor as provided in Article 6, in which event the Owner shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all Work rejected by the Architect as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Architect's additional services made necessary thereby.

13.2.2 If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

13.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Subparagraphs 4.5.1, 13.2.1 and 13.2.2, unless removal is waived by the Owner.

13.2.4 If the Contractor fails to correct defective or non-conforming Work as provided in Subparagraphs 4.5.1, 13.2.1 and 13.2.2, the Owner may correct it in accordance with Paragraph 3.4.

13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by

written notice from the Architect, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Architect's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.2 TERMINATION BY THE OWNER

14.1 Termination for Convenience: It is agreed that the Owner may, without and default of the Contractor, terminate this Agreement for the convenience of the Owner at any time upon three (3) days notice to the Contractor, and upon such termination, the Contractor shall be paid within thirty (30) days after it shall submit to the Owner its requisition for payment, such part of the consideration to be paid hereunder to the Contractor for its Work as the reasonable cost of the Work performed on the project by the Contractor at the time of such termination bears to the reasonable cost of the whole Work undertaken by the Contractor hereunder, plus the cost of any materials specifically purchased for the Work by the Contractor. Contractor shall not be entitled to recovery of anticipatory profits which have not been earned at the time of termination.

Payment for materials shall be made only upon delivery of the materials to the site, and delivery of receipted invoices indicating payment in full therefor, and if requested by the Owner, releases of liens therefor, and such materials shall thereupon become the property of the Owner.

14.2 Termination by Default: The Board of Education of Charles County may, by written notice of default to the Contractor, terminate the whole or any part of the Contract. If, after notice of termination of this Contract under provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of the Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience.

ARTICLE 15

MINORITY BUSINESS ENTERPRISE PROCEDURES

15.1 PURPOSE

15.1.1 To achieve the result that a minimum of **20 percent** of the total dollar value of all construction contracts for each project is made directly or indirectly with certified minority business enterprises, with sub-goals of **7 percent** African-American and **4 percent** Asian, when State Public School Construction Program funds are utilized.

- a. All general contractors and subcontractors, including certified MBE firms, when bidding as general or prime contractors are required to attempt to achieve the MBE subcontracting goals from certified MBE firms approved by the Maryland Department of Transportation (MDOT).

15.2 DEFINITIONS

15.2.1 **Certification** means the determination that a legal entity is a minority business enterprise consistent with the intent of Subtitle 3 of the State Finance and Procurement Article.

15.2.2 **Certified Minority Business Enterprise** means a minority business that holds a certification issued by the Maryland State Department of Transportation (MDOT).

15.2.3 **Corporation**, as defined by MDOT, is an artificial person or legal entity created by or under the authority of the laws of any state of the United States, the District of Columbia or a territory or commonwealth of the United States and formed for the purpose of transacting business in the widest sense of that term, including not only trade and commerce, but manufacturing, mining, banking, insurance, transportation and other forms of commercial or industry activity where the purpose of the organization is profit. For eligibility for certification, disadvantaged and/or minority individuals must own at least 51 percent of the voting stock and at least 51 percent of the aggregate of all classes of stock that have been issued by the corporation. (Note: stock held in trust is not considered as stock held by the disadvantaged business persons when computing the business person(s) ownership.)

15.2.4 **Economically/Socially and Economically Disadvantaged:** The law establishes the level of personal net worth at \$1,500,000, above which an individual may not be found to be economically disadvantaged.

15.2.5 **Managerial Control**, as defined by MDOT, means that a disadvantaged or minority owner(s) has the demonstrable ability to make independent and unilateral business decisions needed to guide the future and destiny of a business.

Control may be demonstrated in many ways. For a minority owner to demonstrate control, the following examples are put forth, but are not intended to be all inclusive:

- a. Articles of Incorporation, Corporate Bylaws, Partnership Agreements and other agreements shall be free of restrictive language which would dilute the minority owner's control thereby preventing the minority owner from making those decisions which affect the destiny of a business; Articles of Incorporation, Corporate Bylaws, Partnership Agreements and other agreements shall be free of restrictive language which would dilute the minority owner's control thereby preventing the minority owner from making those decisions which affect the destiny of a business;
- b. The minority owner shall be able to show clearly through production of documents the areas of the disadvantaged business owner's control, such as, but not limited to:
 - (1) Authority to sign payroll checks and letters of credit;
 - (2) Authority to negotiate and sign for insurance and/or bonds;
 - (3) Authority to negotiate for banking services, such as establishing lines of credit; and
 - (4) Authority to negotiate and sign for contracts.
- c. Agreements for support services that do not lessen the minority owner's control of the company are permitted as long as the disadvantaged or minority business owner's authority to manage the company is not restricted or impaired.

15.2.6 **Minority Business Enterprise (MBE)** means any legal entity, except a joint venture, that is (a) organized to engage in

commercial transactions, and (b) at least 51% owned and controlled by one or more individuals who are socially, and economically disadvantaged, including:

- African Americans;
- Alaskan Native;
- American Indians/Native Americans;
- Asians;
- Hispanics;
- Physically or mentally disabled individuals;
- Women; or

A non-profit entity organized to promote the interests of physically or mentally disabled individuals.

15.2.7 **Minority Business Enterprise Liaison** means the employee of the school system designated to administer the Board's Minority Business Enterprise Procedures for State funded public school construction projects.

15.2.8 **Operational Control**, as defined by MDOT, means that the disadvantaged or minority owner(s) must possess knowledge necessary to evaluate technical aspects of the business entity. The primary consideration in determining operational control and the extent to which the disadvantaged or minority owner(s) actually operates a business will rest upon the specialties of the industry of which the business is a part. The minority owner should have a working knowledge of the technical requirements needed to operate in his/her industry. Specifically, in the construction industry and especially among small (one to five person firms) contractors, it is reasonable to expect the disadvantaged or minority owner(s) to be knowledgeable of all aspects of the business. Accordingly, in order to clarify the level of operational involvement which a minority owner must have in a business for it to be considered eligible, the following examples are put forth, but are not intended to be all inclusive:

- a. The minority owner should have experience in the industry for which certification is being sought; and
 - b. The minority owner should demonstrate that basic decisions pertaining to the daily operations of the business are independently made. This does not necessarily preclude the disadvantaged or minority owner(s) from seeking paid or unpaid advice and assistance. It does mean that the minority owner currently must possess the knowledge to weigh all advice given and to make an independent determination.
- 15.2.9 **Ownership**, as defined by MDOT, means that:
- a. The minority owners of the firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the owner(s). There shall be no restrictions through, for example, charter requirements, by-law provisions, partnership agreements, franchise or distributor agreements, or any other agreements that prevent the minority owner(s), without the cooperation or vote of any non-minority, from making a business decision of the firm.
 - b. This means that the disadvantaged or minority persons, in order to acquire their ownership interests in the firm, have made real and substantial contributions of capital, expertise, or other tangible personal assets derived from independently-owned holdings without benefit of a transfer of assets, gift or inheritance from non-minority persons. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not minority persons, or the mere participation as an employee rather than as a manager. If the ownership interest held by a disadvantaged or minority person is subject to formal or informal restrictions, such as options, security interests, agreements, etc., held by a non-minority person or business entity, the options, security interests, agreements, etc., held by the non-minority person or business entity must not significantly impair the disadvantaged or minority person's ownership interest.

15.2.10 **Partnership** means an unincorporated association of two or more persons to carry on as co-owners of a business for profit. For a partnership to be deemed eligible for certification under the MDOT

Program, the disadvantaged or minority person's interest must be at least 51 percent of the partnership capital.

15.2.11 Sole Proprietorship, as defined by MDOT, is a for profit business owned and operated by a disadvantaged or minority person in his or her individual capacity. For a sole proprietorship to be deemed eligible for certification under the DBE/MBE Program the disadvantaged or minority person must be the sole proprietor.

15.3 IMPLEMENTING PROCEDURE

15.3.1 The contractor shall perform the contract in accordance with the representations made in the Certified Minority Business Enterprise Utilization and Fair Solicitation Affidavit and the MBE Participation Schedule submitted as part of the bid proposal, and other materials submitted after the bid proposal.

15.3.2 Failure to so perform the contract, without prior written consent of the Owner, shall constitute a violation of a material term of the Contract.

15.3.3 The Contractor, including Certified Minority Business Enterprise firms, shall structure his/her operations for the performance of the Contract to attempt to achieve the purpose of this procedure.

.1 The Contractor agrees to use his/her best efforts to carry out these requirements consistent with the efficient and effective performance of the Contract.

.2 The Contractor must ensure that Minority Business Enterprises shall have the maximum practical opportunity to compete for Subcontract work under the Contract, even after the award of the Contract.

.3 The contractor shall submit monthly to the MBE Liaison or the school system's designated representative a report listing any unpaid invoices, over 30 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made.

.4 The contractor shall included in its agreements with its certified MBE subcontractors, a requirement that those subcontractors submit monthly to the MBE Liaison or appropriate representative a report that identifies the prime contract and lists all payments received from contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.

.5 The contractor shall cooperate in any reviews of the contractor's procedures and practices with respect to minority business enterprises which the MBE Liaison and/or the Public School Construction Program may, from time to time, conduct.

.6 The contractor shall maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the contractor and furnished to the MBE Liaison and or appropriate representative on request.

.7 All records concerning MBE participation must be retained by the contractor for a period of five years after final completion of the contract, and will be available for inspection by the MBE Liaison, representatives from the Public School Construction Program and/or other designated official entities.

.8 At the option of the MBE Liaison or appropriate agency representative, upon completion of the contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

.9 If at any time after submission of a bid or proposal and before execution of a contract, the apparent successful bidder or offeror determines that a certified MBE listed on its

MBE Participation Schedule has become or will become unavailable, then the apparent successful bidder or offeror **shall immediately notify the MBE Liaison and provide such officer with a reason(s) why the change has occurred**. Any desired change in the MBE Participation Schedule shall be approved in advance by the MBE Liaison and shall indicate the contractor's efforts to substitute another certified MBE subcontractor to perform the work. Desired changes occurring after the date of contract execution may occur only upon written approval by the Owner and subsequently by contract amendment.

15.3.4 A business that presents itself as a minority business may participate in a project but the contract value may not be counted toward the MBE goal until the business is certified by MDOT. Only the funds paid after MDOT certification can be counted toward meeting the MBE goal. If a certified MBE fails to meet the standards specified in State Finance and Procurement Article.14-301, Annotated Code of Maryland, the MBE is still eligible for credit towards an MBE goal under a contract entered into when the MBE was eligible and certified. Ineligibility of an MBE to participate in the MBE program may not be the sole cause of the termination of the MBE contractual relationship for the remainder of the term of the contract.

15.3.5 The contractor shall complete the Standard Monthly Contractor's Requisition for Payment (IAC/PSCP Form 306.4), specifically page 3 of 16 Minority Business Enterprise Participation, with each requisition submitted for payment. This submittal should accurately reflect the payments to be made that month to MBE's, and the cumulative total for the period reflected.

15.3.6 At the completion of the project the contractor shall prepare a written summary of the final certified MBE participation in the contract as compared to the proposed participation at the time of contract award. This should include the name of each certified MBE, the amount that was anticipated to be paid at the time of contract award, the amount actually paid, and an explanation of any differences which have occurred.

15.4 DOCUMENTATION REQUIRED

15.4.1 The following documentation shall be considered as part of the Contract, and shall be furnished by the Bidder with the bid proposal:

15.4.1.1 A completed Certified Minority Business Enterprise Utilization and Fair Solicitation Affidavit.

15.4.1.2 A completed MBE Participation Schedule naming each MBE who will participate in the project.

15.4.2 The following documentation shall be considered as part of the Contract, and shall be furnished to the Board of Education MBE Liaison within ten (10) working days after **written** notification that the firm is the low responsive, responsible Bidder:

15.4.2.1 A completed Minority Business Enterprise Subcontractor Project Participation Statement shall be completed and signed by the prime contractor and each MBE firm listed on the MBE Participation Schedule.

15.4.2.2 The Outreach Efforts Compliance Statement shall be signed and completed by the Bidder/Offeror.

15.4.3 If the low responsive, responsible bidder is unable to achieve the overall contract goal of **20 percent with sub-goals of 7 percent and 4 percent**, the low responsive, responsible bidder shall submit within 10 working days from **written** notification that the firm is the low responsive, responsible Bidder, a completed Minority Subcontractors Unavailability Certificate, Outreach Efforts Compliance Statement and a written Request For Waiver (pages 1 and 2) which shall include the following:

15.4.3.1 A detailed statement of the efforts made by the contractor to identify and select portions of the work proposed to be performed by subcontractors in order to increase the likelihood of achieving the stated goal;

15.4.3.2 A detailed statement of the efforts made by the contractor at

least ten (10) days before the bid opening to solicit minority business enterprises through written notices that describe the categories of work for which subcontracting is being solicited, the type of work to be performed and specific instructions on how to submit a bid;

15.4.3.3 A detailed statement of the contractor's efforts to make personal contact with MBE firms identified for item (2) above;

15.4.3.4 A record of the name, address, telephone number and dates contacted for each MBE identified under items (2) and (3) above;

15.4.3.5 A description of the information provided to MBEs regarding the drawings, specifications and the anticipated time schedule for portions of the work to be performed;

15.4.3.6 Information on activities to assist minority business enterprises to fulfill bonding requirements or to obtain a waiver of these requirements;

15.4.3.7 Information on activities to publicize contracting opportunities to minority business enterprises, attendance at pre-bid meetings or other meetings scheduled by the MBE Liaison or designated representative;

15.4.3.8 As to each MBE that placed a subcontract quotation or offer which the apparent low bidder or successful offeror considers not to be acceptable, a detailed statement of reasons for this conclusion.

15.5 WAIVER

15.5.1 A waiver of an MBE contract goal may be granted by the school system only upon receipt of a Minority Subcontractors Unavailability Certificate, the Outreach Efforts Compliance Statement and a written Request for Waiver Form (pages 1 and 2) as described above.

15.5.1.1 The MBE Liaison will review and accept or reject the minority business enterprise material that is submitted, and may obtain legal advice or assistance from their attorney.

15.5.1.2 The MBE Liaison may assist the low responsive, responsible bidder in identifying certified minority businesses that could participate in the contract.

15.5.1.3 Assistance in the review of a request for a waiver (the documentation and justifications) may be requested from the Public School Construction Program.

15.6 LIQUIDATED DAMAGES FOR VIOLATIONS OF MBE REQUIREMENTS

15.6.1 In addition to, and not in replacement of, any other liquidated damages clauses that may be found in these contract documents, the following liquidated damages provision are included in this agreement. Liquidated damages may be assessed in the amounts indicated and upon the conditions as outlined below:

15.6.2 This contract requires the contractor to make good faith efforts to comply with the Minority Business Enterprise ("MBE") Program and contract provisions. The Owner and the Contractor acknowledge and agree that the Owner will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. The parties further acknowledge and agree that the damages the Owner might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

15.6.3 Therefore, upon a determination by the Owner that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or contract provisions, the Contractor agrees to pay liquidated damages to the Owner at the rates set forth below. The Contractor expressly agrees that the Owner may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the Owner is anticipated to incur as a result of such violation.

- a. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): **\$29.43** per day until the monthly report is submitted as required.

- b. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): **\$94.00** per MBE subcontractor.
- c. Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the contract.
- d. Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- e. [THIS SECTION DOES NOT APPLY TO CONSTRUCTION CONTRACTS]. Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of this contract: **\$100.00** per day until the undisputed amount due to the MBE subcontractor is paid.

15.6.4 Notwithstanding the use of liquidated damages, the Owner reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law."

ARTICLE 16 BUY AMERICAN STEEL

16.1 Consistent with the provisions of the Maryland Annotated Code, Article 78A, Section 68 through 72, inclusive, known as the "Buy American Steel" Act of the General Assembly of Maryland, Acts of 1978.

16.2 Wherever in this Project Manual, "Steel Products", as hereafter defined, are part of the supplies, services or construction required by Owner, for the construction, reconstruction, alteration, repair, improvement or maintenance of Public Works, the parties Bidding shall predicate their base offer solely upon "Steel Products" manufactured in the United States of America or one of its territories, continental or insular, subject to the jurisdiction of the United States in sufficient quantities to meet the requirements of this Contract, in which event the Base Bid is to contain a Certification to this effect.

16.3 Each Bidder shall further more attach to his Proposal the proposed cost of the supplies, services or construction required by Owner were foreign "Steel Products" to be used.

16.4 The Owner, in addition to all other reservations set forth in the Invitation to bid, shall at the time of the award and Contract pursuant thereto, determine whether the supplies, services or construction required is to utilize steel products or domestic or foreign origin.

16.5 In the event the award and Contract pursuant thereto is predicated upon the utilization of domestic "Steel Products", then, in addition to all other requirements mandated for performance hereafter in the project manual, and all documents issued in conjunction therewith, the person, corporation, partnership or other business unit or association to whom the award and Contract pursuant thereto is issued, shall as a further condition precedent to the obtaining of Final Payment from Owner, furnish same with a Certificate under oath that all "Steel Products" supplied, delivered or constructed were of domestic origin.

16.6 The "Buy American Steel" Act of Maryland defines "Steel Products" as any Product "rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by

a combination of two or more of such operations, from steel made in the United States by the Open hearth, basic oxygen, electric furnace, Bessemer, or other steel making processing".

reduction of the Contract Sum by the lesser amount of three-tenths of one percent (0.3%) or \$1,500.00. The Contract Time shall remain unchanged.

ARTICLE 17
OTHER CONDITIONS OR PROVISIONS

17.1 MATERIAL SAFETY DATA SHEETS

17.1.1 The Contractor shall furnish the Architect and the Owner a Material Safety Data Sheet for any Product that requires such a document prior to installing or using that product in the Work.

17.1.2 Material Safety Data Sheets shall also be posted by the Contractor in a conspicuous location at the Project site.

17.2 RIGHT OF AUDIT

17.2.1 The Owner shall have the right to audit, at any location deemed appropriate by the Owner, all documents pertaining to this Contract including Change Orders or Construction Change Directives thereto until the expiration of three (3) years following the date of Final Completion and acceptance of the work. The Contractor shall retain and the Owner shall have access to all books, documents, papers, records, and computer files for such three-year period, unless released from this requirement in writing by the Owner.

17.3 THIRD PARTY BENEFICIARY RELATIONSHIP

17.3.1 The Contractor shall include the following paragraph in each written subcontract in which the Contractor enters with a Subcontractor for performance of work of the Project. Similarly, Subcontractors and Sub-subcontractors shall include the following paragraph in subcontracts with their Subcontractors for performance of work of the Project.

The Subcontractor hereby acknowledges that the Owner, the Board of Education of Charles County, is a direct and intended third party beneficiary of this Agreement and is entitled to all rights and remedies afforded to a direct and intended third party beneficiary of this Agreement with respect to the enforcement of the Subcontractor's obligations hereunder. Provided, however, that nothing herein shall create any obligation on the part of the Owner, or any employee or agent of the Owner, to pay or see to the payment of any sums due to the Subcontractor hereunder or any other party not directly contracting with the Owner.

17.4 USE OF TOBACCO PRODUCTS

17.4.1 The Contractor shall not permit its employees, or the employees of any Subcontractor, Sub-subcontractor, or material or equipment supplier to smoke cigarettes, cigars, or a pipe or to use smokeless tobacco products (vapor smoking, electronic cigarettes, or similar) at or on the Project site or on contiguous lands owned by the Owner. The first instance of use or visual possession of a tobacco product by an aforementioned employee shall result in a reduction of the Contract Sum by the lesser amount of one-tenth of one percent (0.1%) or \$500.00; the second instance shall result in a reduction of the Contract Sum by the lesser amount of two-tenths of one percent (0.2%) or \$1,000.00; the third and each subsequent instance shall result in the

17.5 No Damage for Delay:

17.5.1 A time extension shall be the sole remedy for delays or suspensions caused by or attributable to the Owner, even if the delays or suspensions were: (1) of a kind not contemplated by the parties, (2) amounted to an abandonment of the Contract, or (3) were caused by active interference. The Owner shall have the right, at any time and for any reason, to delay or suspend the whole or any part of the Work herein without incurring liability therefore. There shall be no damages for delay.

17.5.2 The owner shall be entitled to schedule the Work in the manner which, in its sole exercise of discretion, is in its best interest. There shall be no claims for inefficiencies, stacking of trades, lost productivity, or the like which result from either the Owner's schedule or the manner in which the Work is performed.

17.6 PREVAILING WAGE RATES

17.6.1 Wages paid on this project are subject to the prevailing wage rates issued by the State of Maryland, Department of Labor, Licensing and Regulation pursuant to the authority of the Commissioner of Labor and Industry given under State Finance and Procurement Article, Section 17-209, Annotated Code of Maryland.

17.6.2 The wage determination for this project is included with the Contract Documents.

17.6.3 State Finance and Procurement Article, Section 17-201 through 17-226 inclusive shall apply.

17.7 REGISTERED SEX OFFENDERS

17.7.1 In accordance with the State of Maryland's Criminal Procedure Article, Section 11-722, **A PERSON WHO ENTERS INTO A CONTRACT WITH A LOCAL BOARD OF EDUCATION MAY NOT KNOWINGLY EMPLOY AN INDIVIDUAL TO WORK AT A SCHOOL IF THE INDIVIDUAL IS A REGISTERED SEX OFFENDER.**

17.7.2 Therefore, individuals who are registered sex offenders are not eligible to work on any Charles County Public Schools' project. The Contractor (and his subcontractors and suppliers) shall check the Maryland Department of Public Safety & Correctional Services' MARYLAND SEX OFFENDER REGISTRY and search for the name of any employee to be assigned to work on this project.

17.7.3 This provision applies to all individuals that may be working on the School property, making deliveries or visiting the school property for business purposes.

17.7.4 In the event that a registered sex offender is discovered to be working on the Project, whether through employment by the Contractor, subcontractor, or equipment or material supplier, the Contractor shall immediately remove the individual from the premises and permanently terminate his work assignment.

17.7.5 If the Contractor is found to have violated this provision subsequent to an award by CCPS, the Contract may be immediately terminated at the Owner's sole discretion if the Contractor is unable to demonstrate he has exercised care and diligence in the past in checking the Maryland registry.

End of Section 00 72 00.