

**CONTRACT AND GENERAL CONDITIONS
BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT, made this _____ day of _____, 2021, by and between _____, hereinafter called the "Contractor," and Vail Unified School District No. 20., an Arizona unified school district organized and operating in Pima County, hereinafter called the "Owner":

WITNESSETH:

That the Contractor and the Owner agree as follows:

ARTICLE 1
THE CONTRACT DOCUMENTS

1.1 CONTRACT DOCUMENTS.

1.1.1 The following listed documents constitute the Contract Documents, and they are all as fully a part of the Contract and General Conditions as if herein repeated:

1. This Contract and General Conditions between Owner and Contractor.
2. Notice of Award, Notice to Proceed and Receipt of Notice dated _____.
3. Performance Bond and Labor and Material Payment Bond.
4. Addenda Nos. _____ dated _____.
5. Specifications and Drawings (as modified by the above-referenced Addenda and selected alternates as listed herein, if any) as set forth in Exhibit A to this Contract.
6. Proposal, dated _____.
7. Instructions to Bidders.
8. Notice Inviting Sealed Bids.
9. Certificates of Insurance.

1.1.2 In the event of any inconsistency between any of the terms of the before enumerated documents, such inconsistencies shall be resolved by giving precedence to the terms of the lowest numbered of the above numbered documents. Anything in these Contract Documents to the contrary notwithstanding, the provisions of all pertinent general public laws of the State of Arizona in effect at the time of the execution of this Contract shall be a part of the Contract between the parties and shall take precedence over all of the other Contract Documents.

ARTICLE 2
SCOPE OF WORK

2.1 As required by the Contract Documents, the Contractor shall furnish and install all of the materials and labor and perform all of the work for the Owner's Project known as ("Project" herein). Drawings and Specifications for this Project were prepared by ("Architect"), registered Architect(s), who shall act as Architect pursuant to the Contract Documents.

ARTICLE 3
CONTRACT AMOUNT, TIME AND LIQUIDATED DAMAGES

3.1 CONTRACT AMOUNT. The Owner shall pay the Contractor the sum of _____ Dollars (\$_____) for the Base Bid and alternates _____, which is the Contract Amount. This sum is subject to additions or deductions made in accordance with the provisions of the Contract Documents.

3.2 CONTRACT TIME. The Contract Time as used and defined in Article 11 herein shall be _____ (____) calendar days.

3.3 LIQUIDATED DAMAGES. Liquidated damages as used and defined in Article 11 herein shall be _____ Dollars (\$_____.00) per calendar day for each day the Work remains not substantially complete after expiration of the Contract Time as defined in Article 11 and specified in Subparagraph 3.2 above.

3.4 OVERHEAD AND PROFIT. Limits on the amount of overhead and profit allowed on Change Orders are specified in Article 15.

3.5 SOURCE OF FUNDS. The Owner's obligations and liabilities under this Contract shall be paid with funds from bonds and no other source, unless otherwise provided herein.

3.6 CONTINGENCY FUND. It is agreed that the Contract Amount includes a "Contingency Fund Allowance" of _____, and this fund is intended by the parties to be used by the Owner to pay the Contractor for the reasonable cost of work, labor and materials furnished on the Project at the Owner's request for additional construction, installations, or services not included in the Plans and Specifications, at the time of bidding, involving extra cost to the Contractor. That portion of the Contingency Fund Allowance not expended as provided herein shall be credited to the Owner upon the contract completion.

3.7 CASH ALLOWANCES. The Contractor agrees that he has included in the Contract Amount all cash allowances, if any, specified in the Contract Documents, and shall cause that portion of the Work so covered to be done by such contractors as the Owner may direct. The Contractor agrees that the Contract Amount includes all his expenses of whatever nature, overhead and such profit as he deems proper in connection with the cash allowances. No demand for any sum other than that included in the Contract Amount shall be allowed in connection with the cash allowances. If the actual cost of any portion of the Work covered by a cash allowance, when determined, is more than or less than the allowance contemplated by the Contract Amount, the Contract Amount shall be adjusted accordingly by Change Order which will include additional handling costs on the site, labor, installation costs, overhead, profit and other expenses resulting to the Contractor from any increase over the original allowance.

3.8 EXPENDITURE OF CONTINGENCY FUND AND CASH ALLOWANCES. The Architect and a person designated in writing by Owner, acting jointly, are authorized to act for and on behalf of the Owner as Special Agents of the Owner in the expenditure of the Cash Allowances, and Contingency Fund Allowance, including any allowance later added to the Contract Documents pursuant to the provisions for modifying the Contract Documents. No act of such Special Agents purporting to authorize any charge against the Contingency Fund Allowance or any Cash Allowance shall be valid unless in writing, specifying the particular work to be done and the whole cost thereof to the Owner, and signed by both Special Agents. The cost of extra work or changes shall be determined under the provisions of Article 15 of this Contract and General Conditions.

Said Special Agents are not authorized to exceed the amount of the Contingency Fund Allowance or Cash Allowance hereinbefore listed. An item of additional work or change in Plans and Specifications which involves an extra cost shall be valid only if authorized by Change Order in accordance with Article 15 of this Contract and General Conditions.

The Contractor is warned of, and agrees to, these express limitations on the authority of the Owner's Special Agents.

ARTICLE 4 DEFINITIONS AND GENERAL PROVISIONS

4.1 OWNER, CONTRACTOR, AND ARCHITECT. The Owner, the Contractor, and the Architect are those herein defined in this Contract and General Conditions. They are treated throughout the Contract Documents as though each were of the singular number and masculine gender.

4.2 SPECIAL AGENTS. The Architect and the person designated by Owner as Special Agent in Article 3 shall be Special Agents acting for and on behalf of the Owner for the duration of this Contract, and in the manner hereinbefore mentioned in Article 3.

4.3 SUBCONTRACTOR. See Article 8.

4.4 NOTICE. See Articles 7 and 10.

4.5 TIME. See Articles 3 and 11.

4.6 COST. The term "Cost" shall include all charges, costs, losses, and expenditures of every kind whatsoever for the Work, or portion thereof to which reference is made with respect to this term.

4.7 FINISH, SUBSTANTIAL COMPLETION AND FINAL COMPLETION DATES. See Article 11.

4.8 MODIFICATIONS. See also Article 1. A Modification is:

.1 A written amendment to the Contract and General Conditions signed by all parties;

.2 A Change Order properly signed by all parties pursuant to Paragraph 15.1; or

.3 A Field Order for a minor change in the Work issued by the Architect pursuant to Paragraph 15.4.

A modification may be made only after execution of the Contract and General Conditions.

4.9 **CONTRACT.** The Contract consists of all the Contract Documents enumerated in Article 1. The 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 Paragraph 4.8.

4.10 **WORK.** The term "Work" includes, without limitation, furnishing all labor, administrative services and supervision necessary to produce the construction required by the Contract Documents and furnishing and installing all materials and equipment incorporated, or to be incorporated in such construction to complete the Project.

4.11 **PROJECT.** The Project is the total construction designed by the Architect of which the Work performed under the Contract Documents may be the whole or a part.

4.12 **EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS OF THE CONTRACT DOCUMENTS.**

4.12.1 The Contract and General Conditions shall be signed by the Owner and the Contractor. By executing the Contract and General Conditions, each party accepts and agrees to be bound by each of the Contract Documents listed in Article 1.

4.12.2 By executing the Contract and General Conditions, the Contractor represents and warrants that he has visited the site, has familiarized himself with the local conditions under which the Work is to be performed, including any and all relevant weather conditions or records or both, and correlated all of his observations with the requirements of the Contract Documents.

4.12.3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include, without limitation, all labor, materials, equipment and other items as provided in Subparagraph 7.4.1 necessary for the proper execution and completion of the Work. Words and abbreviations which have well known technical or trade meanings are used herein in accordance with such recognized meanings.

4.12.4 The organization of the Specifications into divisions, sections and articles, and the arrangements 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, or constituting part of the contract or having any legal or contractual significance.

4.12.5 Written interpretations necessary for the proper execution or progress of the Work, in the form of drawings or otherwise, will be issued with reasonable promptness by the Architect in accordance with any schedule agreed upon, or with reasonable promptness in any case. Such interpretations shall be consistent with and reasonably inferable from the Contract Documents.

4.13 **COPIES FURNISHED AND OWNERSHIP.**

4.13.1 The Contractor will be furnished, free of charge, all copies of Contract Documents reasonably necessary for the execution of the Work as determined by the Architect in his sole discretion.

4.13.2 All Drawings, Specifications and other data, and copies thereof, furnished to the Contractor are and shall remain the property of the Architect. They are not to be used on any other project, and, with the exception of one set for each party to the Contract, are to be returned to the Owner upon request at the completion of the Work.

4.13.3 It shall be the responsibility of the Contractor to insure that each Subcontractor, Sub-subcontractor and supplier has a current set of those portions of the Construction Documents, that may be required for proper execution of their respective portions of the Work.

ARTICLE 5 ARCHITECT

5.1 DEFINITION.

5.1.1 The Architect is the person or organization identified as such in this Contract and General Conditions and the term "Architect" means the Architect or his authorized representative.

5.1.2 Nothing contained in the Contract Documents shall create any contractual relationship between the Architect and the Contractor.

5.2 ADMINISTRATION OF THE CONTRACT.

5.2.1 The Architect will provide general administration of this Contract, including performance of the functions hereinafter described.

5.2.2 The Architect will be the Owner's representative during construction, until final payment and including the warranty period. The Architect will have authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument which will be shown to the Contractor. The Architect will advise and consult with the Owner, and all of the Owner's instructions to the Contractor shall be issued through the Architect, except where the Owner deems direct communication with the Contractor necessary. Any direct communication between Owner and Contractor shall be copied to the Architect.

5.2.3 The Architect and Owner 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 and Owner or Owner's representative may perform their functions under the Contract Documents.

5.2.4 The Architect shall make periodic visits to the site to observe the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. These visits shall be of the frequency necessary to adequately observe the progress of the Work. On the basis of his on-site observations as an Architect, he shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. The Architect shall not be responsible for the Contractor's ways and means, methods, techniques and procedures in the construction of the Project or for enforcement of safety requirements on the Project.

5.2.5 Based on such observations and the Contractor's Applications for Payment, the Architect will make recommendations as to the amounts owing to the Contractor and will issue

Certificates for Payment in such amounts, as provided in Subparagraph 12.4.1.

5.2.6 The Architect will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and the Contractor, except where otherwise provided herein. The Architect will promptly render such interpretations as he may deem necessary for the proper execution or progress of the Work.

5.2.7 All claims, disputes and other matters in question relating to the execution or progress of the Work, payment, time extension or interpretation of the Contract Documents shall be referred initially to the Architect in the manner provided by Subparagraph 12.4.4, within the time limits prescribed in Subparagraph 15.2.1, for decision by the Architect or Owner, as the subject of the matter may require, which will be rendered in writing within a reasonable time.

5.2.8 The interpretations and decisions of the Architect shall be consistent with the intent of the Contract Documents. In his capacity as interpreter and judge, he will exercise his best efforts to insure faithful performance by both the Owner and the Contractor.

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

5.2.10 If a decision of the Architect is made pursuant to the terms of Subparagraph 5.2.7 which goes directly to the Contractor and Owner in writing, and it states that it is final but subject to appeal, no claim, dispute, or other matter covered by such decision may be made later than thirty days after the date on which the party making the demand received the decision. Appeal shall be to the District Representative, pursuant to the School District Procurement Rules of the Arizona State Board of Education.

5.2.11 The Architect and the Owner each have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Architect's reasonable opinion, he considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he will recommend to the Owner that the Owner should require the Contractor to stop the Work or any portion thereof, or to require special inspection or testing of the Work as provided in Subparagraph 10.8.2 whether or not such Work be then fabricated, installed or completed. However, neither the Architect's authority to act under this Subparagraph, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty of responsibility of the Architect to the Contractor, any Subcontractor or material supplier, any of their agents or employees, or any other performing any of the Work.

5.2.12 The Architect will review Shop Drawings, Product Data and Samples promptly as provided in Subparagraphs 7.12.1 through 7.12.8, inclusive.

5.2.13 The Architect will prepare Change Orders in accordance with Article 15 and will have authority to order minor changes in the Work not involving extra cost as provided in Subparagraph 15.3.

5.2.14 The Architect will conduct inspections to determine the date or dates of Substantial Completion and Final Completion, shall notify the Owner of a date or dates for inspections, and shall issue a Certificate of Substantial Completion and of Final Completion. He will receive written guarantees, record drawings, maintenance manuals and related documents required by the Contract and assembled by the Contractor, and will transmit a final Certificate for Payment to the Owner.

5.2.15 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction as set forth in Articles 1 through 18, inclusive, of this Contract and General Conditions will not be modified or extended without written consent of the Owner and the Architect, notice of which will be given to the Contractor.

5.2.16 The Architect will not be responsible for the acts or omissions of the Contractor, any Subcontractors or Material Vendors, or any of their agents or employees, or any other persons performing any of the Work.

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

ARTICLE 6 OWNER

6.1 DEFINITION. The Owner is the person or organization identified as such in the Contract and General Conditions.

6.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER.

6.2.1 The Owner shall furnish all surveys describing the physical characteristics, legal limits and utility locations for the site of the Project.

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

6.2.3 The Owner shall issue all instructions to the Contractor through the Architect. The Owner may designate an Owner's Construction Consultant to be present on the site for all or any portion of the Project. The Owner's Construction Consultant may communicate directly with both the Architect and the Contractor. If the Owner's Construction Consultant observes deviations in the Work from the Contract Documents, or other deficiencies in the Work, he shall advise promptly the Contractor and Architect of such deviation or deficiency. If the Contractor concurs with the Construction Consultant, the Contractor shall take such steps as are required to make the Work comply with the Contract Documents, so long as the Architect agrees with the proposed resolution. If the Contractor or Architect disagree with the observation of the Construction Consultant, the matter shall be referred to the Architect for interpretation or decision pursuant to Article 5 of this Contract.

6.2.4 All final decisions concerning Change Orders, Payments, Substantial Completion, Final Completion, Liquidated Damages and Contract Time shall be reserved to the Owner and this provision of the Contract shall take precedence over any other term hereof.

6.2.5 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, Completion and Insurance in Articles 9, 12 and 14, respectively.

ARTICLE 7 CONTRACTOR

7.1 DEFINITION.

7.1.1 The Contractor is the person or organization identified as such in this Contract and General Conditions and the term "Contractor" means the Contractor or his authorized representative. The Contractor, and all Subcontractors employed on the Project shall possess valid Arizona Contractor's Licenses as required by law.

7.1.2 Whenever the words "as may be directed," "suitable," "or equal," "as approved," or other words of similar intent and meaning are used within the Contract Documents implying that judgment or discretion is to be exercised or a decision is to be made, it is understood that it is the judgment, discretion, or decision of the Architect to which reference is made.

7.1.3 All materials and articles of any kind necessary for this Work are subject to the approval of the Architect as provided in the Contract Documents.

7.1.4 After execution of the Contract, changes of brand named, trade named, trade marked, patented articles, or any other substitutions will be allowed only by written order signed by the Architect and Owner, in which case the Owner shall receive all benefit of the difference in cost involved, except where choice of material or method is designated "or equal" or "acceptable alternates" in the Specifications.

7.2 REVIEW OF CONTRACT DOCUMENTS AND EXAMINATION OF SITE.

7.2.1 By executing this Contract the Contractor warrants that he has examined the site and carefully studied and compared the Contract and General Conditions, Drawings, Specifications, Addenda, and all other Contract Documents before so executing the Contract. The Contractor shall at once report to the Architect and the Owner 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 so long as the Architect and the Owner are notified thereof unless discovery of such error, inconsistency or omission should have been made by careful examination of the Contract Documents prior to submitting a Proposal. The Contractor shall do no Work without appropriate Contract Documents, or where required, approved Shop Drawings, Product Data, Samples or interpretations from the Architect.

7.2.2 The Contractor shall be required to use for data and dimensions, figures marked on the drawings in preference to what the drawings may measure to scale. In the absence of figured dimensions, the Architect shall be notified and the dimensions provided within a reasonable time. Drawings shall not be scaled in the absence of figured dimensions.

7.2.3 The Contractor shall verify all dimensions shown and check all measurements in connection with any present building or buildings, levels of grades, walks, driveways, or other existing conditions, before executing any work. Contractor shall immediately report to the Architect any discrepancies between the Plans and actual field conditions. Failure to report any discrepancy within 24 hours after discovery will constitute a waiver of any claim arising out of such discrepancy. This provision shall have precedence over any other notice provisions contained herein.

7.3 SUPERVISION AND CONSTRUCTION PROCEDURES. The Contractor shall supervise 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.

7.4 LABOR AND MATERIALS.

7.4.1 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, heat, utilities, transportation and any 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. No materials shall be incorporated into this Work that contain more than 0% asbestos.

7.4.2 Any work necessary to be performed after regular working hours, on Sundays or legal holidays, shall be performed without additional expense to the Owner.

7.4.3 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. When requested in writing by the Owner, the Contractor shall remove from the Project any person who commits trespass or is, in the opinion of the Owner, disorderly, dangerous, insubordinate, incompetent or violates any policies of the Owner. If the Owner requests such a removal, he shall notify the Architect in writing of his action. The Contractor shall keep the Owner and Architect harmless from damages or claims for compensation that may occur in the enforcement of this requirement. The Contractor shall not permit the use of tobacco products, alcohol or illegal drugs on the project site.

7.5 WARRANTY.

7.5.1 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 so conforming to these standards 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.

7.5.2 The warranty provided in Paragraphs 7.5 and 18.1 shall be in addition to and not in limitation of any other warranty or remedy available pursuant to law or the Contract Documents.

7.6 TAXES. The Contractor shall pay all sales, consumer, use, transaction privilege and other taxes required by law in connection with the performance of this Contract, whether in force as of the date of this Contract or later imposed. If the Contractor's principal place of business is not in Arizona, Contractor shall post a bond for taxes in compliance with A.R.S. § 42-1305.02 and furnish evidence of such bond to Owner prior to submitting any application for payment hereunder

7.7 PERMITS, FEES AND NOTICES.

7.7.1 Unless otherwise provided in the Plans, Specifications or by Addendum, the Contractor shall secure and pay for all permits, fees, inspections and reinspections necessary for the proper execution and completion of the Work, including, without limitation the following permits and fees: building, plumbing, mechanical, electrical and fire protection permits, water meters, fire protection water service fees, sewer connection fees, sewer fees or assessments, gas service fees and electric service fees payable to the utility companies. The Contractor shall procure and pay for all necessary utilities for the Project, including temporary utility hook-ups and utilities used in course of construction.

7.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Architect and the Owner in writing. 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 and Owner, he shall assume full responsibility therefor and shall bear all costs attributable thereto, including any reasonable attorney's fees incurred by Owner in connection therewith.

7.8 SUPERINTENDENT. The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Contractor shall assign to the Project a Superintendent prior to the pre-construction meeting and shall furnish to the Owner the Superintendent's resume. The Superintendent shall be satisfactory to the Owner and shall not be changed except with the consent of the Owner, unless the Superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. 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 will be confirmed in writing. Other communications will be so confirmed on written request in each case.

7.9 RESPONSIBILITY FOR THOSE PERFORMING THE WORK. The Contractor shall be responsible to the Owner for the acts and omissions of all his employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work or supplying any material or equipment to be incorporated in the Work under a contract of any nature with the Contractor.

7.10 PROGRESS SCHEDULE AND REPORTS.

7.10.1 The Contractor, within fourteen (14) days after being awarded the Contract, shall prepare and submit for the Architect's review his planned Construction Progress Schedule for the Work as provided in the specifications. The Construction Progress Schedule shall be related to the entire Project and shall indicate the dates for the starting and completion of the various components and phases of construction and shall be revised monthly or as required by the conditions of the Work, upon request of and subject to the review of the Architect. The Contractor shall comply with the requirements of the Specifications in connection with the preparation and revision of the Construction Progress Schedule. The Contractor agrees to promptly respond to all inquiries by the Architect concerning significant deviation of the progress of construction from the Construction Progress Schedule. Failure to timely respond to such request or significant delay from the Construction Progress Schedule may result in progress payments being withheld. Approval of the Construction Progress Schedule by the Architect shall not relieve the Contractor from his obligation to complete the Project within the Contract Time.

The Contractor shall furnish to the Architect four (4) copies of a complete list of all major items of architectural, mechanical, plumbing and electrical equipment and materials within fourteen (14) days of the Start Date. Include projected dates of submittal of all items of material for which submittals are required and delivery dates of all items of material and equipment that are considered by the Architect, in his sole discretion, critical or which may require, in order to obtain, long lead time. Submit a complete list. A partial list will not be acceptable unless prior permission is obtained from the Architect. The Contractor shall prepare and provide to the Architect and Owner a weekly Construction Schedule Status Report which will inform the Owner that, with respect to each category of the Construction Progress Schedule and each item on the material

delivery date list, the work or delivery is: (a) on schedule; (b) behind schedule, but will not interfere with the completion of the Project within the Contract Time specified in the Contract; or (c) behind schedule and may prevent the completion of the Project within the Contract Time. In the event that the Construction Schedule Status Report indicates that a delay has occurred or may occur that may prevent the completion of the Project within the Contract Time because the Work in a particular category is behind schedule or a delay in material deliveries is anticipated, the Construction Schedule Status Report shall contain a statement of what corrective measures are being undertaken by the Contractor.

7.10.2 For purposes of determining time extensions resulting from additional work ordered by the Owner, adverse weather or other delays, all float or slack time in the Construction Progress Schedule shall be owned and controlled by the Owner. The Owner shall allow use of such float or slack time by the Contractor as long as such allocation of float or slack time does not adversely affect the completion date of the Project. No additional time shall be allowed for claims for delay, whether or not caused by or the fault of the Owner, if such delay is less than the available float or slack time available for the particular task.

7.10.3 The Contractor shall submit to the Architect such financial and cash flow information regarding job progress, applications for payments and proposed change orders to allow Owner to prepare or have prepared, financial reports, complete through the end of the preceding month, containing a statement of expenditures and a statement of anticipated cash flow. The information furnished shall, at a minimum, account for appropriated amounts, expended amounts and all pending change order proposals. The information for the cash flow statement must reflect Contractor's best estimate of anticipated monthly outflows for the remainder of the project for all items under the Contract. The information required herein shall be furnished with each application for payment.

7.11 DRAWINGS AND SPECIFICATIONS AT THE SITE.

7.11.1 The Contractor shall maintain at the site for the Owner one (1) copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders, other Modifications, and manufacturers' printed specifications and recommendations, in good order and marked carefully and accurately to record on a daily basis all changes made during construction, all of which shall be available to the Architect and Owner at all times. These Drawings shall be delivered to the Architect upon completion of the Work. The Drawings indicating the changes shall be maintained throughout the duration of the Project and permanent Record Drawing mylars shall be prepared from them by the Contractor at the Contractor's expense and submitted to the Architect.

7.11.2 The Contractor shall also submit to the Architect for his record three copies each of all manufacturers' maintenance manuals, printed specifications and recommendations, which by reference in the several divisions of the Specifications are a part thereof.

7.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.

7.12.1 Shop Drawings and Product Data are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are required by the Contract Documents and are prepared by the Contractor or any Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor, and which illustrate or describe some portion of the Work.

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

7.12.3 The Contractor shall review, correct any errors, stamp with his approval and submit, with promptness and in orderly sequence so as to cause no delay in the Work or in the work of any other contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents or subsequently by the Architect as covered by Modifications. Shop Drawings, Product Data and Samples shall be properly identified as specified, or as the Architect may require. At the time of submission the Contractor shall inform the Architect in writing of any deviation in the Shop Drawings, Product Data or Samples from the requirements of the Contract Documents. The Architect's responsibility for reviewing Shop Drawings, product data, samples and other submissions of the Contractor are limited to those required by the Contract Documents or modifications to the Contract Documents.

7.12.4 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he has checked and coordinated all Shop Drawings, Product Data and Samples with the requirements of the Work and of the Contract Documents.

7.12.5 The Architect will review and take other appropriate action with respect to Shop Drawings, Product Data and Samples with reasonable promptness so as to cause no delay, but only for conformance with the Contract Documents.

7.12.6 The Contractor shall make any corrections required by the Architect to comply with the Contract Documents and shall resubmit the required number of corrected copies of Shop Drawings, Product Data or new Samples until approved. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings and Product Data to revisions other than the corrections requested by the Architect on previous submissions.

7.12.7 The Architect's review of Shop Drawings, Product Data or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation, nor shall the Architect's approval relieve the Contractor from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples.

7.12.8 No portion of the Work requiring a Shop Drawing, Product Data or Sample submission shall be commenced until the submission has been approved by the Architect. All such portions of the Work shall be in accordance with approved Shop Drawings, Product Data and Samples.

7.13 **CUTTING AND PATCHING OF WORK.** The Contractor shall accurately and carefully do all cutting, fitting, or patching of his Work that may be required to make its several parts fit together properly, and shall not endanger any Work, either new or existing, by cutting, excavating or otherwise altering such Work or any part of it.

7.14 **CLEANING UP.**

7.14.1 The Contractor at all times during the progress of the Work shall keep the buildings and site 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 not

specified to be left at the site, and shall clean all glass surfaces and other areas or materials as specified, and leave the Work "broom-clean" or its equivalent, except where more stringent cleaning requirements are provided by the Contract Documents.

7.14.2 If the Contractor fails to satisfactorily clean up, the Owner will do so and the cost thereof shall be charged to the Contractor as provided in Paragraph 10.6.

7.15 COMMUNICATIONS. The Contractor shall forward all written communications to the Owner through the Architect, with a copy to Owner's Construction Consultant, except where otherwise required herein.

7.16 INDEMNIFICATION.

7.16.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Owner's Construction Consultant, Architect Architect's Consultants and each of their agents and employees from and against any and all claims, damages, losses and expenses, including any attorney's fees court costs, experts' fees and other costs incurred, arising out of or resulting from the performance of the Work, delivery to the work site of any and all materials to be used in the Work, and any and all other activities connected with the Work, provided that any such claim, damage, loss or expense:

.1 is attributable to bodily injury, sickness, disease or death, or to injury 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 or intentional act or omission of the Contractor, any Subcontractor, Sub-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.

7.16.2 In any and all claims against the Owner, Owner's Construction Consultant, 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 7.16 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 worker's compensation acts, disability benefit acts or other employee benefit acts.

7.16.3 The obligations of the Contractor under this paragraph 7.16 shall not extend to the negligent actions or omissions of the Architect, the Architect's consultants, and agents and employees of any of them, arising out of (1) the preparation or approval of designs, drawings, opinions, reports, surveys, change orders or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 8 SUBCONTRACTORS

8.1 DEFINITION.

8.1.1 A Subcontractor is a person or organization who has a direct contract with the Contractor to supply materials or equipment or 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.

8.1.2 A Sub-subcontractor is a person or organization who has a direct or indirect contract with the Subcontractor to perform any of the Work at the site, or to supply any materials or equipment to be used in the Project. The term "Sub-subcontractor" is referred to throughout the Contract Documents as singular in number and masculine in gender, and means a Sub-subcontractor or an authorized representative thereof.

8.1.3 Nothing contained in the Contract Documents shall create any contractual, master-servant or principal-agent relationship between the Owner, the Owner's Construction Consultant or the Architect and any Subcontractor or Sub-subcontractor.

8.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.

8.2.1 If, after the actual signing of this Agreement, the Owner refuses to accept any person or organization on the Subcontractor and Material Vendor List for good and substantial reason, the Contractor shall submit an acceptable substitute and the Contract Amount shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued. However, no increase in the Contract Amount shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting a name with respect thereto.

8.2.2 The Contractor shall not contract with any Subcontractor proposed to perform portions of the Work designated in the Construction Documents, or if none is so designated, with any Subcontractor proposed for the principal portions of the Work who has not been accepted by the Owner. The Contractor will not be required to contract with any Subcontractor against whom he has a reasonable objection.

8.2.3 If the Owner requires a change of any proposed Subcontractor previously accepted by it, the Contract Amount shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued.

8.2.4 The Contractor shall not make any substitution for any Subcontractor who has been accepted by the Owner unless the substitution is approved in writing by the Owner.

8.2.5 Notwithstanding any provisions to the contrary in the Contract Documents, if any Subcontractor listed is found not to be qualified to perform public work as a matter of law, upon written notice from the Owner, the Contractor shall submit a qualified Subcontractor for the Owner's approval and shall substitute such qualified and approved Subcontractor at no additional cost to the Owner.

8.3 SUBCONTRACTUAL RELATIONS.

8.3.1 All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between the Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provisions that:

.1 preserve and protect the rights of the Owner and the Architect under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;

.2 require that such work be performed in accordance with the requirements of the Contract Documents;

.3 require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 12;

.4 require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-Subcontractor where appropriate) in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner;

.5 waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Article 14, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee under Article 14; and

.6 obligate such Subcontractor specifically to consent to the provisions of this Paragraph 8.3.

8.4 PAYMENTS TO SUBCONTRACTORS.

8.4.1 The Architect may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of work done by such Subcontractors.

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

ARTICLE 9 SEPARATE CONTRACTS

9.1 OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS. The Owner reserves the right to award other contracts in connection with other portions of the Project under conditions similar to this Contract.

9.2 MUTUAL RESPONSIBILITY OF CONTRACTORS.

9.2.1 The Contractor shall afford other contractors reasonable opportunity for the introduction to the site and storage of their materials and equipment thereon and the execution of their work, and shall properly connect and coordinate his Work with theirs.

9.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the Architect any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an

acceptance of the other contractor's work as fit and proper to receive his Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work.

9.2.3 Should the Contractor cause damage to the Work or property of any separate contractor on the Project, the Contractor shall, upon written notice, promptly attempt to settle such other contractor's claim. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall promptly notify the Contractor, who shall defend such proceedings at the Contractor's expense, and if any judgment against the Owner arises therefrom, the Contractor shall promptly pay or satisfy it and shall immediately, upon presentation to it of a statement thereof, reimburse the Owner for all attorney's fees and court costs which the Owner has incurred.

9.3 CUTTING AND PATCHING UNDER SEPARATE CONTRACTS.

9.3.1 The Contractor shall do all cutting, fitting or patching of his Work that may be required to fit it to receive or be received by the work of other contractors indicated in the Contract Documents. The Contractor shall not endanger any work of any other contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other contractor except with the written consent of the Owner.

9.3.2 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

9.4 OWNER'S RIGHT TO CLEAN UP. If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Paragraph 7.14, the Architect may request that the Owner clean up and charge the cost thereof to the several contractors as the Architect shall determine to be just.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 LAW OF THE PLACE. The Contract shall be governed by the law of the State of Arizona, and any other subordinate jurisdiction in which the Project is located, including without limitation the Arizona School District Procurement Rules, Arizona Administrative Code R7-2-1001 et seq.

10.2 SUCCESSORS AND ASSIGNS. 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 any part hereof or sublet it as a whole or in part without the written consent of the other, nor shall the Contractor assign or pledge any monies due or to become due to him hereunder, without the previous written consent of the Owner.

10.3 WRITTEN NOTICE. Written notice shall be deemed to have been duly served if delivered in person to the individual 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. Notice to the Architect is notice to the Owner except for notice of inconsistencies, errors or omissions in the Contract Documents, request for extensions of time, request for changes in the Contract amount,

appeal of decisions by the Architect or Owner and notice of claim or legal process. All such notices shall be given to both Architect and Owner.

10.4 CLAIMS FOR DAMAGES. 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 which claim is not covered by Article 15 hereof, a claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

10.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND. The Contractor shall furnish and maintain performance and labor and material payment bonds as required by Arizona law covering the faithful performance of the Contract and the payment of all obligations arising thereunder in such form and amount as the Owner may prescribe and with such sureties as may be agreeable to the Owner. The premiums shall be paid by the Contractor. The Contractor shall, prior to commencement of the Work, submit such bonds to the Owner. Individual sureties are not acceptable.

10.6 OWNER'S RIGHT TO COMPLETE THE WORK. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract, the Owner may, after seven days' written notice to the Contractor and/or his surety, if any, and without prejudice to any other remedy he may have, proceed to make such other necessary and reasonable arrangements to carry out the Work in accordance with the Contract Documents, all at the expense of the Contractor, including the Owner's attorneys' fees and other costs.

10.7 ROYALTIES AND PATENTS. The Contractor shall pay all royalties and license fees. He shall defend all suits or claims from infringement of any patent right and shall save the Owner harmless from loss on account thereof, including Owner's attorneys' fees and court costs, except that Owner shall be responsible for all such loss when a particular design, process or product of a particular manufacturer or manufacturers is specified. But, if the Contractor has reason to believe that the design, process or products specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives information to the Architect prior to starting the Work.

10.8 TESTS.

10.8.1 Where the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any of the Work to be inspected, tested or approved, the Contractor shall give the Architect timely notice of its readiness and of the date arranged so the Architect may observe such inspection, testing or approval. The Owner shall pay the cost of all such tests, except where otherwise provided herein, and except for retest or reinspection of Work which fails to comply with the Contract Documents.

10.8.2 All equipment and materials used in the construction of the Project, especially those upon which the strength and durability of the structure may depend, shall be subject to adequate inspection and testing in accordance with accepted standards to establish conformity with Specifications, applicable codes and standards and suitability for use intended all as set forth more particularly in the Specifications.

10.8.3 If after the commencement of the Work the Architect determines that any of the Work requires special inspection, testing, or approval which Subparagraph 10.8.1 does not include,

he will, upon written authorization from the Owner, order such special inspection, testing or approval, and the Contractor shall give notice of readiness as in Subparagraph 10.8.1. If such special inspection or testing reveals a failure of the Work to comply:

- .1 with the requirements of the Contract Documents, or
- .2 with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Work,

the Contractor shall bear all costs thereof, including the cost of the Architect's additional services made necessary by such failure, and the costs of such inspection or testing and other expenses related thereto, including without limitation Owner's legal fees, if any, incurred in connection with advising Owner on such failure of compliance; otherwise the Owner shall bear such costs.

10.8.4 Required certificates of re-inspections or testing to secure compliance with Clauses 10.8.3.1 or 10.8.3.2 above shall be paid for by the Contractor.

10.8.5 If the Architect wishes to observe the inspections, tests or approvals required by this Paragraph 10.8, he will do so promptly and, where appropriate, at the source of supply.

10.8.6 Neither the observations of the Architect in his administration of the Construction Contract, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the Contract Documents.

10.9 LEGAL FEES AND COSTS. The prevailing party shall be entitled to recover its attorney's fees, any costs of suit, any expert witness fees and the actual cost of any test or inspection incurred in connection with any effort undertaken to enforce any of the terms of this Contract.

ARTICLE 11 TIME AND LIQUIDATED DAMAGES

11.1 CONTRACT TIME, LIQUIDATED DAMAGES AND RELATED PROVISIONS.

11.1.1 It is understood and agreed that the construction of the Work under the Contract Documents shall be commenced on the date stated in the Notice to Proceed issued by the Architect and shall be Substantially Complete by the Contractor no later than the number of consecutive calendar days from that date, which number is the Contract Time as specified in Paragraph 3.2, herein. The Contract Time is the period of time from (1) the date specified in the Notice to Proceed as the date upon which the Contractor is to commence the Work (the "Start Date"), through (2) the date when the agreed time for Substantial Completion of the construction of the Project expires (the "Finish Date"). The date of beginning, rate of progress, and time for completion are essential conditions of the Contract, and the Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the Contract Time specified. It is expressly agreed that the Contract Time is reasonable.

11.1.2 If the Substantial Completion Date as defined in Subparagraph 11.1.3 for the Project or any Phase thereof, occurs after the expiration of the Contract Time, the Contractor shall pay the Owner the amount or amounts stated in Article 3 as liquidated damages for each calendar day the Work remains incomplete after expiration of the Contract Time. These amounts are agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the Owner would sustain. It is expressly agreed that the amounts of liquidated damages set forth herein are

reasonable. Said amounts may be retained from time to time by the Owner from payments due the Contractor.

11.1.3 The date of the Substantial Completion of the Work, or designated portion thereof, is the date established by a Certificate of Substantial Completion prepared by the Architect when construction is sufficiently complete, in accordance with the Contract Documents as they may have been modified by any Change Orders agreed to by the parties, so that the Owner may occupy the Project, or a designated portion thereof, if he so elects, for the use for which it is intended. Certification of a designated portion of the Work by the Architect as being "Substantially Complete" and occupancy of that portion thereafter by the Owner shall neither release, or otherwise operate to excuse the Contractor from his duty to complete the remainder of the Work within the Contract Time nor relieve the Contractor from any liability for not completing expeditiously the remainder of Work.

11.1.4 The Final Completion Date is the calendar date when all items of the Work are one hundred percent (100%) finished, with no items of any scope, large or small, outstanding and remaining to be completed, and all known defective work has been corrected. When the Architect certifies in writing, pursuant to the terms of Subparagraph 12.6.2, that the Final Completion Date is reached and it is approved by the Owner, the Contractor may make application for final payment pursuant to Subparagraph 12.6.2.

11.2 PROGRESS AND COMPLETION.

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

11.2.2 The Contractor shall begin the Work on the Start Date as defined in Subparagraph 11.1.1. He shall carry the Work forward expeditiously with adequate forces and shall complete it as required herein.

11.3 DELAYS AND EXTENSIONS OF TIME.

11.3.1 If the Contractor is delayed at any time in the progress of the Work by any cause which the Owner determines may justify the delay, including, but not limited to, unforeseeable cause beyond the control and without the fault or negligence of the Contractor, its agents and employees and Subcontractors and Sub-subcontractors and their agents and employees, including, but not restricted to: acts of God, acts of the public enemy, acts of the Owner, acts of another contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather over the entire Contract Time, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. No extension of the Contract Time pursuant to this paragraph shall relieve the Contractor from any obligation attendant upon him under any of the provisions of this Contract. It is expressly agreed that the Owner's liability for delay from any cause shall be limited to granting a time extension to the Contractor, and there is no other obligation, expressed or implied, on the part of the Owner to the Contractor for delay from any cause other than Owner caused delay. If the Contractor makes a claim for delay, as provided herein, for which he alleges that the Owner is responsible, which is unreasonable under the circumstances and which was not within the contemplation of the parties, the Owner agrees to negotiate with the Contractor the validity of such claim and the amount of damages incurred by the Contractor, if any.

11.3.2 Time extensions may be granted by the Owner in cases where unusually severe weather results in the inability of the Contractor to prosecute the work. Anticipated adverse

weather as determined by the records of the National Oceanic and Atmospheric Administration ("NOAA") shall not entitle the Contractor to an extension of the Contract Time. The NOAA schedule of anticipated adverse weather will constitute the base line for monthly weather time evaluations. During the Contract Time each month, actual adverse weather days will be recorded on a calendar day basis (including weekends and holidays) and compared to the monthly anticipated adverse weather. The term actual adverse weather days shall include days on which the Work is impacted by adverse weather. The number of actual adverse weather days shall be calculated chronologically from the first to the last day in each month. Adverse weather days must prevent work for 50 percent or more of the Contractor's work day and delay work critical to the timely completion of the Project. If the number of actual adverse weather days exceeds the number of days of anticipated adverse weather days, the Owner will determine whether the Contractor is entitled to a time extension. The Contractor's Construction Progress Schedule must reflect the anticipated adverse weather delays on all weather dependent activities.

11.3.3 All claims for extension of time shall be made in writing to the Architect and Owner no more than fifteen (15) days after the occurrence of the delay; otherwise, they shall be waived. In the case of a continuing cause of delay, only one claim is necessary, and the Contractor shall promptly notify the Architect in writing of the date of the termination of the continuing cause of delay.

11.3.4 If no schedule or agreement is made stating the dates upon which written interpretations as set forth in Subparagraph 4.12.5 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after demand is made for them, and not then unless such claim is reasonable.

ARTICLE 12 PAYMENTS AND COMPLETION

12.1 **CONTRACT AMOUNT.** The Contract Amount is as stated in this Contract and General Conditions and is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents, subject to credits due Owner for unused amounts in the Contingency Fund or Cash Allowances or credits or increases resulting from Change Orders.

12.2 **SCHEDULE OF VALUES.** Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values reflecting as nearly as reasonably possible the actual values of the various components of the Work aggregating the total Contract Amount, prepared in such form as Owner and Architect may require, and supported by such data to substantiate its correctness as the Architect may require. Each item in the schedule of values shall include its proper share of overhead and profit. This schedule shall be used only as a basis for the Contractor's Application for Payment.

12.3 **PROGRESS PAYMENTS.**

12.3.1 On or about the first day of each calendar month during the course of construction, the Contractor shall submit to the Architect, with a copy to Owner's Construction Consultant, an itemized Application for Payment, which shall be AIA Document G702, supported by such data substantiating the Contractor's right to payment as the Owner or the Architect may require. If the Contractor desires to exercise his option to require the Owner to accept substitute security in lieu of retention provided for in Subparagraph 12.4.3 of this Contract and General Conditions, as permitted by law, the Contractor shall submit his request for acceptance of substitute security on Owner's

approved form entitled "Request for Acceptance of Substitute Security and Assignment of Securities in Lieu of Retention" prior to his first Application for Payment. The Contractor shall comply with all of the instructions appearing on Owner's approved form for assigning substitute security. The Contractor agrees to pay Owner any reasonable expenses incurred by Owner in determining the sufficiency of the assignment or assignments, including a reasonable attorney's fee, if the Contractor fails to complete any part of Owner's approved form, or completes any part of those forms incorrectly, or attempts an assignment which reasonably requires Owner to consult an attorney to determine its sufficiency and that attorney reasonably concludes that the assignment is not legally sufficient. Any expenses so incurred by Owner shall be deducted by Owner from Owner's next payment to Contractor.

12.3.2 Payments shall be based on the Work actually performed during the preceding calendar month. Payment may be made for materials not incorporated in the Work but delivered and suitably stored at the site under such conditions agreed upon in writing by the Owner.

12.3.3 Material delivered and suitably stored at the site by the Contractor, Subcontractors, Sub-subcontractors, or Material Vendors shall be insured to the full value of the material and shall be suitably stored and protected. Only such material that is in accordance with the Contract Documents shall be installed into the Work. Until the Final Completion and acceptance of the Work by the Owner, it shall be the Contractor's responsibility to protect all materials installed in or delivered to the Project.

12.3.4 The Contractor warrants and guarantees that title for all work, materials and equipment covered by the Contract Documents shall pass to the Owner upon Final Completion and acceptance by the Owner and that such work, materials and equipment shall be free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 12 as "claims".

12.4 CERTIFICATION OF PAYMENT.

12.4.1 If the Contractor has made Application for Payment as above, then not later than the tenth day of the month the Architect shall approve or modify the Application and forward immediately such Certificate for Payment to the Owner for the Owner's approval and payment for such amount as the Architect determines to be properly due, or state in writing the Architect's reasons for withholding, in whole or in part, the amount applied for as provided in Subparagraph 12.5.1.

12.4.2 Certification of the Application for Payment will constitute a representation by the Architect to the Owner, based on his observations at the site as provided in Subparagraph 5.2.4, and the data comprising the Application for Payment, that

.1 the Work has progressed to the point indicated;

.2 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 as a functioning whole upon Substantial Completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to Final Completion, and to any specific qualifications stated in his certification of the Application for Payment); and

.3 that the Contractor is entitled to payment in the amount certified.

In addition, the Architect's certification of final payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 12.6.2 have been fulfilled.

12.4.3 After the Architect has certified an Application for Payment and has promptly forwarded this certification to the Owner for the Owner's approval, after which the Owner shall make a payment to the Contractor on the basis of the value of the Work actually performed during the preceding calendar month in accordance with Subparagraph 12.3.2, less the amount of retention specified in Subparagraph 12.4.5 hereof. Such payments shall be made within thirty days after receipt of application for payment if the Contractor has agreed to adhere to the provisions of A.R.S. § 41-2577(B),(D) and (F). If the Contractor has properly requested the Owner pursuant to Subparagraph 12.3.1 of this Contract and General Conditions to accept substitute security, the Owner shall pay to the Contractor one hundred percent (100%) of the value of the Work actually performed during the preceding calendar month in accordance with this Paragraph 12. If the Contractor did not request an acceptance of substitute security, made an incomplete or incorrect assignment or made a legally insufficient assignment of substitute security, as determined by Owner or Owner's attorney, the Owner shall retain the amount of such approved Application for Payment specified in Subparagraph 12.4.5 hereof as a guarantee of the complete performance of the Contract. Any amounts retained or any securities held by Owner shall be returned to the Contractor within sixty (60) days after the Final Completion Date as specified in Subparagraph 12.6.2 of this Contract and General Conditions, provided the Contractor has by that time duly furnished the Owner any and all documents indicated to be furnished by the close out requirements of the Specifications or required for the proper maintenance and functioning of the Work as a whole. The Contractor shall submit along with the Application for payment lien waivers from each subcontractor, materials or equipment supplier, the aggregate sum of which shall be the amount of the previous progress payment issued to the Contractor. If lien waivers from all subcontractors, materials or equipment suppliers do not equal the aggregate sum of the previous progress payment, the General Contractor shall submit the following statement along with the current progress payment request: "I hereby certify as General Contractor on this project that I have paid all subcontractors, materials or equipment suppliers, for the Work provided in conjunction with the Project for which I have previously received payment."

12.4.4 In his Application for Payment, or in a separate notice, the Contractor shall include and itemize, and furnish such supporting particulars as the Architect or Owner shall require, all claims for additional compensation against the Owner arising under the Contract Documents or any covenant thereof, express or implied, or from any cause whatsoever, within the time limits prescribed in Subparagraph 15.2.1. It is expressly covenanted that the purpose of this provision is to guard the Owner against surprise claims, to permit the Owner to investigate claims as the same may arise, and to prevent vexatious litigation of claims. It is expressly covenanted that the Owner shall have no liability on any claim unless such claim was submitted in writing at the time and in the manner required hereby.

12.4.5 The Owner shall retain ten percent (10%) of the amount of each Application for Payment as insurance of proper performance of the Contract. Once the Contract is fifty percent (50%) complete, one-half of the retention then held shall be paid to the Contractor provided the Contractor is making satisfactory progress and there is no specific cause or claim requiring a greater amount to be retained. After the Contract is fifty percent (50%) completed, five percent (5%) of the amount of each subsequent Application for Payment shall be retained providing the Contractor is making satisfactory progress on the Project. If at any time the Owner determines that the

Contractor is not making satisfactory progress, then the Owner may retain ten percent (10%) of all subsequent Applications for Payment.

12.4.6 No Certificate for a progress payment, nor an acceptance of any security in lieu of the cash retention, 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.

12.5 PAYMENTS WITHHELD.

12.5.1 The Architect may decline to certify payment and may withhold his Certificate in whole or in part if in his opinion he is unable to make representations to the Owner as provided in Subparagraph 12.4.2. The Architect may also decline to certify any Applications for Payment or, because of subsequently discovered evidence or subsequent inspections, 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 claims filed or reasonable evidence indicating probable filing of claims,
- .3 reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount,
- .4 damage to the Owner or another contractor,
- .5 reasonable indication that the Work will not be completed within the Contract Time, or
- .6 unsatisfactory prosecution of the Work by the Contractor.

12.5.2 When the grounds in Subparagraph 12.5.1 are removed, or in the case of 12.5.1.3 above, when the Owner is satisfied that the Contractor will complete the Project at the agreed upon price, payment shall be made for amounts withheld because of them.

12.6 SUBSTANTIAL COMPLETION AND FINAL PAYMENT.

12.6.1 When the Contractor believes that the Work or a designated portion thereof acceptable to the Owner is substantially complete, the Contractor shall prepare for submission to the Architect a "punch list" of items to be completed or corrected. Any item on such list shall be completed or corrected before the Final Completion Date without regard to whether such item may be characterized by anyone as a "warranty item" or otherwise. The failure to include any items on such punch 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 a portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion, which shall be AIA Document G704, which shall state the responsibilities of the Owner and the Contractor for maintenance, heat, utilities, and insurance. The Certificate(s) of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

12.6.2 Upon receipt of written notice from the Contractor that the Work is ready for final inspection and acceptance, the Architect will promptly make such inspection and, when the Architect finds (1) the Work acceptable under the Contract Documents, (2) the Contract fully performed and (3) the Final Completion Date has been reached, as that term is defined in Subparagraph 11.1.4, then, and only then, the Architect shall promptly issue a final Certificate for Payment stating that, to the best of his knowledge, information and belief, and on the basis of observations and inspections, the Work has been fully completed in accordance with the terms and conditions of the Contract Documents, that the entire balance found to be due the Contractor is payable, and that any securities held by the Owner in lieu of a cash retention are returnable. The Architect's written notice required by this paragraph shall state the Date of Final Completion.

12.6.3 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 to final payment, (3) if required by the Owner, other data establishing payment or satisfaction of all such obligations, to the extent and in such form as may be designated by the Owner, and (4) written certification by the Contractor, and such subcontractors, material suppliers and manufacturers as the Owner shall designate, that no materials have been incorporated into the Work which contain any asbestos.

12.6.4 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except previously made in writing and still unsettled.

12.6.5 About three weeks before the expiration of the guarantee period for the Work specified in Paragraph 18.1 herein, or at such other additional earlier time or times as the Owner may agree, the Architect, in company with the Contractor and Owner, shall make an inspection of the Project and certify that to the best of his knowledge, information and belief all defects in material and workmanship occurring during this period have been satisfactorily corrected.

ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

13.1 SAFETY PRECAUTIONS AND PROGRAMS. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work in compliance with all local, state and federal laws and regulations.

13.2 SAFETY OF PERSONS AND PROPERTY.

13.2.1 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 engaged in 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.

13.2.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and the 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.

13.2.3 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.

13.2.4 All damage or loss to any property referred to in Clauses 13.2.1.2 and 13.2.1.3 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, shall be remedied by the Contractor.

13.2.5 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 in writing by the Contractor to the Owner and the Architect.

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

13.3 EMERGENCIES. 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 by the applicable provisions of the Contract Documents.

ARTICLE 14 CONTRACTOR'S INSURANCE

14.1 FACILITY CONSTRUCTION INSURANCE REQUIREMENTS. Prior to the commencement of construction Work, the Contractor shall cause to be obtained with insurers and in amounts acceptable to the Owner insurance in the following terms:

14.1.1 Workers' Compensation insurance to cover obligations imposed by Federal and State statutes having jurisdiction of employees engaged in the construction of the work, and Employers' Liability insurance with a minimum limit of one million dollars (\$1,000,000) each accident.

14.1.2 General Liability insurance with a minimum combined single limit of two million dollars (\$2,000,000) each occurrence applicable to the Work and an annual aggregate limit of liability of two million dollars (\$2,000,000) applicable to the construction of the work. The policy shall include coverage for any and all of the following: bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, and products and completed operations. Further, the policy shall include coverage for the hazards commonly referred to as XCU. The products and completed

operations coverage shall extend for five years past acceptance, cancellation or termination of the Work. Said policy shall contain a severability of interest provision.

14.1.3 Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence with respect to vehicles assigned to or used in the construction of the Work.

14.1.4 Contractor's equipment insurance covering owned, non-owned, leased equipment used in connection with the construction of the work.

14.1.5 Builder's Risk insurance with a limit liability equal to the final completed value of the Work. The coverage shall be written on an all risk of direct damage basis and shall include coverage for flood, water damage, and earthquake and earth movement.

a. This insurance shall cover at the Work construction site, at any off-site location, and while in transit, any and all materials, equipment, machinery, tools, and supplies, including buildings, and all temporary structures to be used in or incidental to the fabrication, erection, testing or completion of the work.

b. This insurance shall cover the insured property against all direct damage, except but not limited to, war and related causes, nuclear perils, infidelity of employees, mysterious disappearance, and ordinary wear and tear. The insurance may exclude the cost of making good any faulty workmanship, material, construction or design, but is intended specifically to cover loss or damage arising as a consequence of these perils.

c. This insurance shall cover against consequential losses that may occur if there is a delay in the completion of the work resulting from an insured peril.

14.1.6 Boiler and Machinery insurance, which shall cover boilers and mechanical equipment when, connected and ready for use and following electrical, hydrostatic, pneumatic or gas pressure acceptance tests.

14.1.7 Commercial crime insurance, which shall cover employees responsible to disburse funds to pay project costs against employee dishonesty, forgery or alteration, computer fraud.

14.1.8 The insurance required by Section 14.1 shall remain in effect until the Owner has accepted its Certificate of Occupancy for the entire Work, and the Contractor and the Owner have agreed in writing that the Work is covered under insurance designed for the purpose of providing coverage for the accepted Work while occupied.

14.1.9 The policies required by Section 14.1.2, 14.1.3, and 14.1.5 herein shall be endorsed to include the Owner as well as its agents, officials, and employees as insureds and shall stipulate that the insurance afforded by the policies shall be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Owner, or their agents, officials or employees shall be excess and not contributory to insurance required by Section 14.1.2, 14.1.3, and 14.1.5.

14.1.10 The Contractor shall cause insurers providing the policies required by Section 14.1 to waive all rights of recovery against the Owner and its agents, officials and employees.

14.1.11 Contractor shall provide, and cause subcontractors to provide, certificates of insurance from insurers acceptable to the Owner prior to commencement of the construction of the Work as evidence that policies providing the required coverages, conditions and limits are in full force and effect. Such certificates shall identify this Agreement and contain provisions that coverage afforded under the policies shall not be canceled terminated, reduced, or materially changed until after sixty (60) days prior written notice has been given to the Owner. Certificates of insurance and any notice of cancellation or material change should be addressed as follows:

Vail Unified School District No. 20
PO Box 800
Vail, Arizona 85641

Certificates evidencing the completed operation liability coverage will be required for three years past the date the Owner accepts its Certificate of Occupancy for the entire work.

14.1.12 The Owner reserves the right to request and receive certified copies of any or all of the above insurance policies and/or endorsements.

14.1.13 If determined to be in the best interest of the Owner, the Owner may provide for any or all of the coverages required in Section 14.1 pursuant to the conditions set forth herein.

14.1.14 All insurance policies required by this Section 14.1 shall be obtained from a financially sound insurance company rated not less than B+ (Very Good) XII by A.M. Best company, and be authorized to do business in the State of Arizona.

ARTICLE 15 CHANGES IN THE WORK AND CLAIMS

15.1 CHANGE ORDERS.

15.1.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Contract Amount and/or the Contract Time shall be adjusted accordingly pursuant to the terms of the Contract Documents.

15.1.2 A Change Order is a written amendment to the Contract Documents signed by the Owner, Architect, and the Contractor, issued after the execution of the Contract, authorizing a Change in the Work or an adjustment in the Contract Amount or the Contract Time. The Contract Amount and the Contract Time may be changed only by Change Order.

15.1.3 The debit or credit, as the case may be, to the Owner resulting from a Change in the Work shall be determined in one or more of the following ways as mutually agreed:

- .1 by a lump sum properly itemized and supported as described below in order to permit evaluation;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon; or
- .3 by actual cost and specified percentage fee covering overhead and profit.

The total amount of overhead and profit allowed on any Change Order, whether increase or decrease shall not exceed 15% of the direct costs of the Change Order Work when the Work is performed by the Contractor, or 5% of the Direct Costs for the Contractor's overhead and profit and 15% for the Subcontractor's overhead and profit when the Work is performed by any level of Subcontractor or Sub-subcontractor. The aforesaid amounts shall include the general conditions, overhead and profit for both the Contractor, Subcontractor(s), and Sub-subcontractor(s), if any. The costs of bond premiums and sales tax shall be added, in that order, after calculation and addition of overhead and profit.

The overhead and profit margin shall cover the costs of any additional supervision and project management including the Contractor's and any Subcontractor's job superintendent, project manager, estimator, field office support, home office support, small tools and all other general conditions items.

For each and every proposed change in the Contract Amount, the Contractor shall provide an itemized breakdown of direct costs, hereinafter called the cost breakdown, that: (1) clearly describes each item, location and scope of work; (2) identifies in detail all labor (by trade classification), materials, equipment and services required to complete the work; (3) lists and extends all respective man hours (or unit hours), labor rates, quantities of materials, dimensions used to compute quantities, material units and unit prices, equipment time and rental rates. This cost breakdown shall be organized in a format that clearly identifies the subtotal of direct costs before overhead (if any), profit, bond and tax are added. The cost breakdown format is subject to the approval of the Owner.

Change proposals from the Contractor shall include separate cost breakdowns as described above from any and all Subcontractors involved with the change. Subcontractor cost breakdowns are to be in writing on their letterhead and signed by the Subcontractor. Contractor shall provide any additional data needed to substantiate costs of changes, including invoices from suppliers and payroll information upon request of the Owner and Architect. The Contractor shall respond to requests for quotations from the Owner within five calendar days.

The Direct Cost is defined as the lowest locally available cost to the Contractor or Subcontractor after all discounts, rebates and concessions are calculated. The Direct Cost is the basis for computing Contractor and Subcontractor overhead and profit margins. The Direct Costs that may be included in the price of a change are limited to the following items directly attributable to the change in the work:

1. Costs of materials, including cost of delivery;
2. Cost of labor, including social security, old age and employment insurance, and fringe benefits required by agreement and Worker's compensation insurance;
3. Rental value of equipment used to perform the Work.

15.1.4 If none of the methods set forth in Subparagraph 15.1.3 is agreed upon to calculate a debit or credit to Owner, the Contractor, provided he otherwise receives a Change Order, shall promptly proceed with the Work involved. The cost of such Work shall then be estimated in good faith by the Architect on the basis of the Contractor's reasonable expenditures and savings, including, a reasonable allowance for overhead and profit as provided in Subparagraph 15.1.3. The

Architect shall then submit that estimate, with all supporting information, to Owner for approval. In such case, and also under Clause 15.1.3.3 above, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease, including an allowance for overhead and profit, as confirmed by the Architect. When both additional debits and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any.

15.1.5 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will create a hardship on the Owner or the Contractor, the applicable unit prices shall be equitably adjusted to prevent such hardship.

15.1.6 Should concealed conditions encountered in the performance of the Work below the surface of the ground be at variance with the conditions indicated by the Contract Documents or should unknown physical conditions below the surface of the ground of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract Amount shall be adjusted by Change Order upon claim by either party made in compliance with Subparagraph 12.4.4 and within the time limits prescribed in Subparagraph 15.2.1.

15.1.7 If the Contractor claims that additional cost or time is involved because of:

- .1 any written interpretation issued pursuant to Subparagraph 4.12.5,
- .2 any order by the Architect and/or Owner to stop the Work pursuant to Subparagraph 5.2.11 where the Contractor was not at fault, or
- .3 any written order for a minor change in the Work issued pursuant to Paragraph 15.3,

the Contractor shall make such claim as provided in Paragraph 15.2.

15.2 CLAIMS FOR ADDITIONAL COST OR TIME. If the Contractor decides to make a claim for an increase in the Contract Amount or any other claim, except one for an extension of Contract Time, he shall give the Architect and the Owner written notice thereof within fifteen (15) days after the occurrence of the event giving rise to such claim or include such notice in the Application for Payment for the month in which the event giving rise to the claim occurred, whichever is earlier. Notice of a claim for extension of Contract Time shall be given within fifteen (15) days of the occurrence of the event giving rise to such claim. Any notice other than one made for an extension of the Contract Time shall be given by the Contractor before proceeding to execute the Work which is the subject matter of the claim, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Subparagraph 13.3.1. All claims shall be made as provided in Subparagraph 12.4.4 within the time limits prescribed herein and no such claim shall be valid unless so made. No change in the Contract Amount or Contract Time resulting from such claim shall be valid unless approved by the Owner and authorized by Change Order.

15.3 MINOR CHANGES IN THE WORK. The Architect shall have authority to order minor changes in the Work not involving an adjustment in the Contract Amount or an extension of

the Contract Time and not inconsistent with the intent of the Contract Documents.

15.4 FIELD INFORMATION MEMOS. The Architect may issue written Field Information Memos which interpret the Contract Documents in accordance with Subparagraph 4.12.5 or which order minor changes in the Work in accordance with Paragraph 15.3 without change in Contract Amount or Contract Time. The Contractor shall carry out such changes specified in the Field Information Memos promptly.

ARTICLE 16 UNCOVERING AND CORRECTION OF WORK

16.1 UNCOVERING OF WORK.

16.1.1 If any Work should be covered contrary to the request of the Architect, it must, if required by the Architect, be uncovered for his observation and replaced, all at the Contractor's expense.

16.1.2 If any other 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 is found to be in accordance with the Contract Documents, the cost of uncovering and replacement after approval by the Owner shall, by appropriate Change Order, be charged to the Owner. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by a separate contractor employed as provided in Article 9, and in that event the Owner shall be responsible for the payment of such costs.

16.2 CORRECTION OF WORK.

16.2.1 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 Final Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including the cost of the Architect's additional services thereby made necessary.

16.2.2 If, within two years after acceptance of the Work by the Owner or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, including the original conformance with the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor, without cost to the Owner, shall correct it promptly after receipt of a written notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition.

16.2.3 All such defective or non-conforming Work under Subparagraphs 16.2.1 and 16.2.2 shall be removed from the site where necessary, and the Work shall be corrected to comply with the Contract Documents without cost to the Owner.

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

16.2.5 If the Contractor does not remove 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 after receipt of a statement of charges therefor, 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 additional architectural services and any attorneys' fees incurred by Owner in connection therewith. 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, and all attorneys' fees and other costs that the Owner may incur in collecting same.

16.2.6 If the Contractor fails to correct such defective or non-conforming Work, the Owner may correct it in accordance with Paragraph 10.6.

16.2.7 The obligations of the Contractor under this Paragraph 16.2 shall be in addition to and not in limitation of any obligations imposed upon him by special guarantees required by the Contract Documents or otherwise prescribed by law.

16.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK. 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 an appropriate reduction in the Contract Amount, or, if the amount is determined after final payment, it shall be paid by the Contractor.

ARTICLE 17 TERMINATION OF THE CONTRACT

17.1 TERMINATION BY THE CONTRACTOR. If the Work is stopped for a period of thirty (30) days, and the Architect and the Owner are immediately notified of such stopping, under an order of any court or other public authority having jurisdiction through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, and by reason of some act or omission of Owner, then the Contractor may, upon thirty (30) days written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including the percentage profit stated in Paragraph 3.4 herein for Work accomplished through the date the notice of termination is given.

17.2 TERMINATION BY THE OWNER.

17.2.1 If the Contractor files or has filed against it any petition in bankruptcy, or if he makes a general assignment for benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or sufficient and proper materials to complete the Work in accord with the Progress Schedule and Contract Time, or he fails to make prompt payments to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of any provision of the Contract Documents, then the Owner, may, without prejudice to any other right or remedy and after giving the Contractor and/or his surety seven days' written notice, terminate the

employment of the Contractor and take possession of the site and all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. Termination of the Contract under this Subparagraph 17.2.1 shall not relieve the Contractor of any warranty obligations he would otherwise have on all Work performed hereunder, and such obligations shall survive termination of this Contract.

17.2.2 If the unpaid balance of the Contract Amount exceeds the costs of finishing the Work, including compensation for the Architect's additional services, attorneys' fees and all other costs incurred by Owner in completion of the Contractor's obligations, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The costs incurred by the Owner as herein provided shall be certified by the Architect.

ARTICLE 18 WARRANTY AND SITE CONDITIONS

18.1 TWO-YEAR WARRANTY.

18.1.1 The Contractor shall warrant all Work under this Contract against defects of material and workmanship for a period of at least two years from the Final Completion Date; provided, however, that those items of the Work specified as having longer warranties shall be warranted for the period specified.

18.1.2 The Contractor shall be responsible for the total cost of repairing and restoring such defective Work to a new condition, at no cost to Owner.

18.1.3 In any case where the subject matter of the defect relates to Work done under a subcontract between the Contractor and any Subcontractor, it is the responsibility of the Contractor, not the Owner, to secure the Subcontractor's performance in compliance with this Paragraph and, in the event of the Subcontractor's failure or refusal within a reasonable time to perform after notice, it shall be the Contractor's responsibility to repair and restore such defective Work to a new condition, at no cost to Owner.

18.1.4 In any case where the defective Work has been brought to the attention of the Contractor by the Owner and the Contractor fails or refuses to correct it, the Owner may elect, without precluding its use of any other remedy it may have available to it, to have the defective Work repaired and restored to a new condition in whatever manner it deems appropriate, regardless of the cost, and the Contractor shall be liable to the Owner for (1) the total cost thereof, including, without limitation, any architectural and legal fees related to effecting the repair, and (2) the sum of \$7,500.00 as liquidated damages for Contractor's failure or refusal to honor his warranty. The amount of \$7,500.00 is agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the Owner would sustain due to the impairment to the use of the facility, other injury and expense, inconvenience and associated aggravation resulting from the Contractor's failure or refusal to honor his warranty.

18.1.5 Material and workmanship made good through compliance with such warranty shall be subject to the same warranty period as the original materials and workmanship. Such warranty period shall begin on the date the replaced material and work is certified as acceptable in writing by the Architect.

- 18.2 SANITATION. The Contractor shall provide temporary sanitation facilities as provided in the Specifications and in accordance with OSHA requirements.
- 18.3 JOB OFFICE. A job office and other temporary facilities shall be provided by the Contractor as required by the Specifications.
- 18.4 USE OF PREMISES.
- 18.4.1 The Contractor shall confine his equipment and plant, the storage of materials, and the operations of his workmen to limits indicated by law, ordinances, permits, or directions of the Owner and shall not unreasonably encumber the premises with materials or equipment.
- 18.5 SEVERABILITY. In the event any provision in this Contract is held invalid by any court of competent jurisdiction, the remaining provisions in this Contract shall be deemed severable and shall remain in full force and effect.
- 18.6 IMMIGRATION LAW COMPLIANCE.
- 18.6.1 The Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal and State immigration laws and regulations related to the immigration status of its employees. Contractor shall obtain statements from its subcontractors of every tier certifying compliance and shall furnish the statements to the Owner upon request. These warranties shall remain in effect through the term of the Contract, and the Contractor and its subcontractors of every tier shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act for all employees performing work pursuant to this Contract. I-9 forms are available for download at USCIS.GOV.
- 18.6.2 The Owner may request, and the Contractor agrees to furnish, verification of compliance from the Contractor or its subcontractors of any tier performing work pursuant to this Contract. Should the Owner reasonably believe or discover that the Contractor or its subcontractors of any tier are not in compliance, the Owner may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor or its subcontractors. All costs necessary to verify compliance are the responsibility of the Contractor.
- 18.7 COMPLIANCE WITH A.R.S. § 35-393.01. Pursuant to A.R.S. § 35-393.01, the Contractor hereby certifies that it is not currently engaged in, and agrees for the duration of this Contract not to engage in, a boycott of Israel.
- 18.8 COMPLIANCE WITH FINGERPRINTING REQUIREMENTS.
- 18.8.1 Contractor shall comply with the requirements of Arizona Revised Statutes Section 15-512(H) regarding the fingerprinting of employees of Contractor, Subcontractors of every tier and vendors who are likely to have unsupervised contact with pupils as determined by the Owner, in its sole and absolute discretion. Contractor shall be responsible for payment of all costs associated with compliance with A.R.S. § 15-512(H).
- 18.9 CANCELLATION. This Agreement is subject to cancellation by the Owner for violation of the provisions of Arizona Revised Statutes Section 38-511.

IN WITNESS WHEREOF, four (4) identical counterparts of this Agreement, each of which shall for all purposes be deemed original thereof, have been duly executed by the parties hereinabove named, on the day and year first above written.

OWNER:

VAIL UNIFIED SCHOOL DISTRICT
NO. 20

By _____
Its _____

CONTRACTOR:

By _____
Its _____

APPROVED AS TO FORM:

By _____
Attorney for Vail Unified School
District No. 20

©2017 DeConcini McDonald Yetwin
& Lacy, P.C.