

Project Manual for Sprayed Urethane Roofing Systems:

Kentucky Purchasing Cooperative -  
Kentucky Educational Development Corporation  
904 Rose Road  
Ashland, KY 41102

Mr. Steve Trimble, Chairman  
Mr. Stan Riggs, Executive Director

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Green River Regional Educational Cooperative  
Kentucky Educational Development Corporation  
Northern KY Cooperative for Educational Services



Ohio Valley Educational Cooperative  
Southeast/Southcentral Educational Cooperative  
West Kentucky Educational Cooperative

**KPC – KENTUCKY PURCHASING COOPERATIVES**  
**GRREC – KEDC – NKCES -OVEC – SE/SC - WKEC**  
**KENTUCKY EDUCATIONAL DEVELOPMENT CORPORATION (KEDC)**  
**904 ROSE ROAD, ASHLAND, KY 41102-7104**  
**Bidding Department (606) 928-0205**  
**[www.kedc.org](http://www.kedc.org) or [www.kybuy.org](http://www.kybuy.org)**

**\*\*\* BID ANNOUNCEMENT \*\*\***

BID TYPE: **PREFERRED VENDOR**

BID REFERENCE: **PV-SURS-2012**

BID PUBLIC NOTICE DATE: **Monday, May 21, 2012**

BID OPENING DATE, TIME: **Monday, June 4, 2012**

BID CONTRACT START DATE: **Monday, June 18, 2012**

BID ITEMS: **Sprayed Urethane Roof Systems**

**BID PURPOSE:** The Kentucky Educational Development Corporation (KEDC) Board of Directors, as the Legal Education Agency (LEA) for the Kentucky Purchasing Cooperatives (KPC) solicits a sealed bid for Sprayed Urethane Roof Systems that would, if accepted by the KEDC Board of Directors or its designee, establish a best value **PREFERRED VENDOR BID CONTRACT** per KRS.45A, with the specifications, standard terms and conditions as defined in this project manual. This bid contract is intended to provide member institutions (especially school districts) the right to contract to purchase goods and services at fixed prices from a specific list of items contained herein this project manual, and other items in general at fixed percentage discount off catalog prices provided as part of the bid proposal. Said contracts shall hereinafter be referred to as the Bid Contract. Selected vendors shall be responsible for complying with all applicable Kentucky Board of Education regulations (especially 702 KAR 4:160), and (through coordination with the Owner and its member institutions) insuring any necessary Architectural or Engineering Design services required by KRS 322.360, and other revised statutes are provided by the Owner and approved by the Kentucky Department of Education. Vendors shall also insure that any necessary approvals required by the Kentucky Department of Housing, Building and Construction are obtained prior to final completion.

# AIA® Document A701™ – 1997

## Instructions to Bidders

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Any singular reference to Contract, Surety, Owner or other party shall be considered plural where applicable.

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### for the following PROJECT:

(Name and location or address):

« Sprayed Urethane Roofing Systems »  
«904 Rose Road  
Ashland, Kentucky 41102 »

### THE OWNER:

(Name, legal status and address):

«KEDC »«904 Rose Road »  
«Ashland, Kentucky 41102 »ems

### THE ARCHITECT:

(Name, legal status and address):

« »« »  
« »

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## **ARTICLE 1 DEFINITIONS**

§ 1.1 Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, the bid form, and other sample bidding and contract forms. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201, or in other Contract Documents are applicable to the Bidding Documents.

§ 1.3 Addenda are written or graphic instruments issued by the Architect prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.

§ 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

§ 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

§ 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.

§ 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.

§ 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work.

## **ARTICLE 2 BIDDER'S REPRESENTATIONS**

§ 2.1 The Bidder by making a Bid represents that:

§ 2.1.1 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.

§ 2.1.2 The Bid is made in compliance with the Bidding Documents.

§ 2.1.3 The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.

§ 2.1.4 The Bid is based upon the materials, equipment and systems required by the Bidding Documents without exception.

## **ARTICLE 3 BIDDING DOCUMENTS**

### **§ 3.1 COPIES**

§ 3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to Bid in the number and for the deposit sum, if any, stated therein. The deposit will be refunded to Bidders who submit a bona fide Bid and return the Bidding Documents in good condition within ten days after receipt of Bids. The cost of replacement of missing or damaged documents will be deducted from the

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deposit. A Bidder receiving a Contract award may retain the Bidding Documents and the Bidder's deposit will be refunded.

**§ 3.1.2** Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the Advertisement or Invitation to Bid, or in supplementary instructions to bidders.

**§ 3.1.3** Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

**§ 3.1.4** The Owner and Architect may make copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

### **§ 3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS**

**§ 3.2.1** The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Architect errors, inconsistencies or ambiguities discovered.

**§ 3.2.2** Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Architect at least seven days prior to the date for receipt of Bids.

**§ 3.2.3** Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

### **§ 3.3 SUBSTITUTIONS**

**§ 3.3.1** The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

**§ 3.3.2** No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Architect at least ten days prior to the date for receipt of Bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the Work, including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

**§ 3.3.3** If the Architect approves a proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.

**§ 3.3.4** No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

### **§ 3.4 ADDENDA**

**§ 3.4.1** Addenda will be transmitted to all who are known by the issuing office to have received a complete set of Bidding Documents.

**§ 3.4.2** Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

§ 3.4.3 Addenda will be issued no later than four days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

§ 3.4.4 Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

## **ARTICLE 4 BIDDING PROCEDURES**

### **§ 4.1 PREPARATION OF BIDS**

§ 4.1.1 Bids shall be submitted on the forms included with the Bidding Documents.

§ 4.1.2 All blanks on the bid form shall be legibly executed in a non-erasable medium.

§ 4.1.3 Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

§ 4.1.4 Interlineations, alterations and erasures must be initialed by the signer of the Bid.

§ 4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change."

§ 4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on the bid form nor qualify the Bid in any other manner.

§ 4.1.7 Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. The Bidder shall provide evidence of legal authority to perform within the jurisdiction of the Work. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

### **§ 4.2 BID SECURITY**

§ 4.2.1 Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Instructions to Bidders. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. The amount of the bid security shall not be forfeited to the Owner in the event the Owner fails to comply with Section 6.2.

§ 4.2.2 If a surety bond is required, it shall be written on AIA Document A310, Bid Bond, unless otherwise provided in the Bidding Documents, and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney.

§ 4.2.3 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

### **§ 4.3 SUBMISSION OF BIDS**

§ 4.3.1 All copies of the Bid, the bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

**§ 4.3.2** Bids shall be deposited at the designated location prior to the time and date for receipt of Bids. Bids received after the time and date for receipt of Bids will be returned unopened.

**§ 4.3.3** The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

**§ 4.3.4** Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered.

#### **§ 4.4 MODIFICATION OR WITHDRAWAL OF BID**

**§ 4.4.1** A Bid may not be modified, withdrawn or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

**§ 4.4.2** Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received, and date- and time-stamped by the receiving party on or before the date and time set for receipt of Bids. A change shall be so worded as not to reveal the amount of the original Bid.

**§ 4.4.3** Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

**§ 4.4.4** Bid security, if required, shall be in an amount sufficient for the Bid as resubmitted.

#### **ARTICLE 5 CONSIDERATION OF BIDS**

##### **§ 5.1 OPENING OF BIDS**

At the discretion of the Owner, if stipulated in the Advertisement or Invitation to Bid, the properly identified Bids received on time will be publicly opened and will be read aloud. An abstract of the Bids may be made available to Bidders.

##### **§ 5.2 REJECTION OF BIDS**

The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.

##### **§ 5.3 ACCEPTANCE OF BID (AWARD)**

**§ 5.3.1** It is the intent of the Owner to award a Contract to the lowest qualified Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

**§ 5.3.2** The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

#### **ARTICLE 6 POST-BID INFORMATION**

##### **§ 6.1 CONTRACTOR'S QUALIFICATION STATEMENT**

Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request, a properly executed AIA Document A305, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted as a prerequisite to the issuance of Bidding Documents.

##### **§ 6.2 OWNER'S FINANCIAL CAPABILITY**

The Owner shall, at the request of the Bidder to whom award of a Contract is under consideration and no later than seven days prior to the expiration of the time for withdrawal of Bids, furnish to the Bidder reasonable evidence that



financial arrangements have been made to fulfill the Owner's obligations under the Contract. Unless such reasonable evidence is furnished, the Bidder will not be required to execute the Agreement between the Owner and Contractor.

### **§ 6.3 SUBMITTALS**

**§ 6.3.1** The Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, after notification of selection for the award of a Contract, furnish to the Owner through the Architect in writing:

- .1** a designation of the Work to be performed with the Bidder's own forces;
- .2** names of the manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the Work; and
- .3** names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

**§ 6.3.2** The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

**§ 6.3.3** Prior to the execution of the Contract, the Architect will notify the Bidder in writing if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

**§ 6.3.4** Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.

## **ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND**

### **§ 7.1 BOND REQUIREMENTS**

**§ 7.1.1** If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Bonds may be secured through the Bidder's usual sources.

**§ 7.1.2** If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

**§ 7.1.3** If the Owner requires that bonds be secured from other than the Bidder's usual sources, changes in cost will be adjusted as provided in the Contract Documents.

### **§ 7.2 TIME OF DELIVERY AND FORM OF BONDS**

**§ 7.2.1** The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to be commenced prior thereto in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

**§ 7.2.2** Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond. Both bonds shall be written in the amount of the Contract Sum.

**§ 7.2.3** The bonds shall be dated on or after the date of the Contract.

**§ 7.2.4** The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

#### **ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

Unless otherwise required in the Bidding Documents, the Agreement for the Work will be written on AIA Document A101, Standard Form of Agreement Between Owner and Contractor Where the Basis of Payment Is a Stipulated Sum.

**KENTUCKY DEPARTMENT OF EDUCATION  
DIVISION OF FACILITIES MANAGEMENT  
AMENDMENT TO  
INSTRUCTIONS TO BIDDERS  
AIA A701-1997**

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**ARTICLE 1 DEFINITIONS**

- 1.1.1** Insert a new paragraph: "The Bidding Requirements and the proposed Contract Documents shall include the current applicable editions of the standard forms published by the American Institute of Architects, with a corresponding Amendment issued by the Kentucky Department of Education, Division of Facilities Management."
- 1.5** Revise the paragraph to read: "The Base Bid is the sum stated in the Form of Proposal for which..."

**ARTICLE 3 BIDDING DOCUMENTS****3.4 ADDENDA**

- 3.4.1** Revise the paragraph to read: "...to all who are known by the Architect to have received..."

**ARTICLE 4 BIDDING PROCEDURES****4.1 PREPARATION OF BIDS**

- 4.1.1** Add the sentence: "At each occurrence throughout the Bidding Requirements, replace the words 'bid form', with 'Form of Proposal'."
- 4.2.1** Revise the paragraph to read: "Each Bid shall be accompanied by a bid security in the form of a Bond provided by a Surety Company authorized to do business in the Commonwealth of Kentucky, or in the form of a certified check, and in an amount equal to at least 5% of the Bid amount, pledging that the Bidder will enter into a contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payments of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. "
- 4.2.2** Revise sentence to read: "The Surety Bond shall be written on AIA Document A310, unless otherwise provided in the Bidding Documents, and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney."

**4.3 SUBMISSION OF BIDS**

- 4.3.1** Delete requirements for bid security.

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- 4.3.2 Add to first sentence: "as indicated in the Advertisement or Invitation to Bid or any extensions thereof made by Addendum."

Revise the last sentence to read: "Any Bids received after the closing time and date for receipt and opening of Bids will be rejected and returned to the Bidder unopened."

#### **4.4 MODIFICATION OR WITHDRAWAL OF BID**

- 4.4.4 Revise paragraph to read: "Bid Security in the minimum amount of 5% of the Bid shall be sufficient for the Bid as modified or resubmitted."

### **ARTICLE 5 CONSIDERATION OF BIDS**

#### **5.1 OPENING OF BIDS**

Delete last sentence in its entirety.

#### **5.3 Acceptance of Bid (Award) [REFERENCE: KRS 45A.365]**

### **ARTICLE 6 POST BID INFORMATION**

#### **6.1 CONTRACTOR'S QUALIFICATION STATEMENT**

- 6.1.2 Add the following paragraph: "In determining the qualifications and responsibilities of the bidder, the Owner shall take into consideration the Bidder's skill, experience, facility, previous work standing, financial standing, capacity and ability to handle work in addition to that in progress, and quality and efficiency of construction plant and equipment proposed to be utilized on the project."

#### **6.2 OWNER'S FINANCIAL CAPABILITY**

Delete the entire paragraph.

#### **6.3 SUBMITTALS**

- 6.3.1 Revise the paragraph to read: "Each bidder shall submit as part of the Form of Proposal a listing of unit prices and a list of subcontractors or material suppliers proposed for each major branch of work itemized and described in the specifications for the Project.

- .1 The listing of the bidder as the subcontractor for a work category certifies that the bidder has in current employment, skilled staff and necessary equipment to complete that category. The architect/engineer will evaluate the ability of all listed subcontractors to complete the work and notify the owner. Listing of the bidder as the subcontractor may invalidate the bid should the architect's review indicate bidder does not have skilled staff and equipment to complete the work category at the time the bid was submitted."

#### **6.4 LIST OF MATERIALS AND EQUIPMENT**

- 6.4.1 Add paragraph: "Each bidder shall submit a complete list of materials and equipment by manufacturer's name, brand and/or catalogue number in the form and manner specified on the Form of Proposal in complete conformance with materials and equipment specified.
- 6.4.2 Add paragraph: "In addition to the list furnished with the proposal, the successful bidder thereafter known as the Contractor, may be requested within thirty (30) calendar days after award of contract to furnish to the Architect a more detailed and complete list of the materials and equipment, together with the manufacturer's or maker's name, brand and/or catalogue number and a catalogue cut or illustration thereof."
- 6.4.3 Add paragraph: "Prior to the award of contract, the Architect will make a preliminary check of the lists included with the bid and advise the bidder through the Owner of the acceptance thereof, and of such other actions as may be necessary in order to meet the requirements of the contract specifications. Should it develop that any of the materials or equipment named in the list do not meet the requirements and intent of the specifications, the bidder shall be required to offer to the Owner other materials or equipment acceptable under the specifications at no change in contract price. Preliminary review and acceptance of the above list shall not relieve the Contractor of furnishing equipment and materials in complete accordance with the specifications."
- 6.4.4 Add paragraph: "Written approval shall be obtained from the Architect covering any substitution. Substitutions are permitted in the following instance:
- (1) Failure to meet quality and intent of specifications;
  - (2) Failure of the supplier or manufacturer to meet delivery schedules or other conditions of the contract;
  - (3) Written release by the supplier or manufacturer."
- 6.4.5 Add paragraph: "The Owner reserves the right to reject the bid of any bidder who fails to furnish the above information as required under Article 6.3 and 6.4."

## **6.5 UNIT PRICES**

- 6.5.1 Add paragraph: "Each bidder shall submit as a part of the bid proposal a list of unit prices as designated on the Form of Proposal."
- 6.5.2 Add paragraph: "Unit prices are for changing or adjusting the scope or quantity of work from that indicated by the contract drawings and specifications."
- 6.5.3 Add paragraph: "The unit prices shall include all labor, materials, equipment, appliances, supplies, overhead and profit."
- 6.5.4 Add paragraph: "Only a single unit price shall be given and it shall apply for either more or less work than that shown on the drawings and called for in the specifications. In the event the contract is required to be adjusted by unit prices, a change order shall be issued for the change and for the increased or decreased amount."

- 6.5.5 Add paragraph: "Unit prices turned in by the bidder shall apply to all phases of the work whether the work be performed by the bidder or by the bidder's (contractor's) subcontractors."
- 6.5.6 Add paragraph: "For unit prices that apply to a lump sum base bid, the Owner reserves the right, prior to an award of contract, to negotiate, adjust and/or reject any price that is determined by the Architect or Owner to be excessive or unreasonable in amount."
- 6.5.7 Add paragraph: "On line item total sum bids where bidders are quoting firm unit prices for estimated quantities of units of work, the unit price is the bid and is not subject to change, either by the bidder or Owner. The Owner reserves the right to correct mathematical errors in extensions and additions by the bidder. The Owner's corrected bid sum total shall take preference over the bidder's computed bid sum total."

## **ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND**

### **7.1 BOND REQUIREMENT**

- 7.1.1 Revise the last sentence to read: "Bonds shall be executed by a surety company authorized to do business in Kentucky."

### **7.2 TIME OF DELIVERY AND FORM OF BONDS**

- 7.2.2 Revise the last sentence to read: "Unless otherwise provided, both bonds shall be written in the amount of the Contract Sum."

## **ARTICLE 9 AWARD OF CONTRACT**

### **9.1 CONTRACT APPROVAL**

- 9.1.1 An award of contract is contingent upon securing an acceptable bid within the amount of funds available.
- 9.1.2 Owner-Contractor Agreements shall be valid only after written notice by the Department of Education, Division of Facilities Management that the proposed construction agreement is approved.

## **ARTICLE 10 PUBLIC WORKS ACT [REFERENCE: KRS 337.505–337.550]**

### **10.1 LABOR REGULATIONS**

- 10.1.1 Work shall be performed in compliance with applicable provisions of the Kentucky Prevailing Wage Act on Public Works Projects (KRS 337.505 thru KRS 337.550).
- 10.1.2 Any bidder and/or subcontract bidder in violation of any wage or work act provision (KRS 337.510 to KRS 337.550) and under citation by the Kentucky Department of Labor is prohibited by KRS 337.990 from bidding on or working on any and all public works contracts either in their name or in the name of any other company, firm, or other entity in which there is vested interest. No bid shall be submitted by a prime bidder or sub-bidder in violation of KRS Chapter 337. The responsibility of the qualifications of the sub-contract bidder is solely that of the prime

bidder. The rejection of the subcontract bidder and re-submittal of a qualified subcontract bidder will be handled per the provisions of these "Instructions" relating to subcontract bidders and materials.

## **10.2 PREVAILING WAGE RATES**

Prevailing wage rates, included with the Supplementary Conditions, shall be paid on this project. The stipulated wage rates represent prevailing minimum wage rates of pay allowable and shall not be construed to mean that higher rates may not have to be paid in order to secure labor.

## **ARTICLE 11 TAXES**

### **11.1 KENTUCKY SALES AND/OR USE TAX**

11.1.1 Bidders are informed that construction contracts of the Commonwealth of Kentucky and political subdivisions are not exempt from the provisions of the Kentucky Sales and/or Use Tax. Current sales and/or Use Tax shall be provided for and included in the bid amount as no adjustments will be permitted nor made after receipt of bids.

### **11.2 FEDERAL EXCISE TAX**

11.2.1 The Commonwealth of Kentucky and its political subdivisions are exempt from Federal Excise Tax.

## **ARTICLE 12 POST BID REVIEW AND MATERIAL SUBMITTAL**

### **12.1 REPRESENTATIVE AT BID OPENING**

12.1.1 Each prime bidder shall have an authorized representative at the bid opening for submittal of the list of materials and equipment, and the post bid review which follows immediately after the opening and reading of bids.

12.1.2 Unless otherwise provided, the apparent low bidder, if requested, shall submit a completed list of materials and equipment within one (1) hour from the close of the reading of the bids. The list of materials and equipment shall be that designated listing contained in the Form of Proposal.

12.1.3 The post bid review will be conducted jointly with representatives of the Architect, Owner, and apparent low bidder. Preliminary review will be directed toward bidder's qualifications, unit prices, list of subcontractors, and list of materials.

## **ARTICLE 13 EQUAL EMPLOYMENT AND NONDISCRIMINATION**

### **13.1 GENERAL POLICY**

13.1.1 The Commonwealth of Kentucky and its political subdivisions are committed to equal job opportunities on public contracts and prohibited from discrimination based on race, creed, color, sex, age, religion, or national origin.

**ARTICLE 14 CONFLICT OF INTEREST, GRATUITIES & KICKBACKS, USE OF CONFIDENTIAL INFORMATION  
(KRS 45A.455)**

Conflict of Interest, Gratuities, Kickbacks, and Use of Confidential Information as described in KRS 45A.455 are expressly prohibited. Penalties for any violation under this statute are located in KRS 45A.990.

**END OF AMENDMENT**



## Supplemental Instructions to Bidders

1. **BID FORMS AND RETURN INSTRUCTIONS:** Bids must be received at the KEDC office at 904 Rose Road, Ashland, KY 41102-7104, not later than the above specified bid opening time and date. Clearly label all bids **PV-SURS-2012** on the outside of the bid package. **Faxed submissions will NOT be accepted. Bids received after the time designated for the bid opening will not be opened by KPC/KEDC.** KPC/KEDC and the Board of Education cannot assume responsibility for any delay as a result of failure of the mails or delivery services to deliver bids on time. (Please note that FED EX does not guarantee delivery time to KPC/KEDC because they classify KEDC as being in a rural area.)

The bidder acknowledges that the bidder has read this invitation, understands it, and agrees to bind by its terms and conditions.

2. **AUTHENTICATION OF BID AND STATEMENT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST AND COMPLIANCE WITH THE KENTUCKY MODEL PROCUREMENT CODE:**

I hereby swear or affirm under penalty of false swearing as provided by KRS 523.040:

I am the bidder (if bidder is an individual), a partner in the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority on its behalf (if the bidder is a corporation).

The costs quoted in the bid response are correct and have been arrived at by the bidder independently and have been submitted without collusion and without agreement, understanding, or planned common course of action, with any vendor of materials, equipment, or services described in the invitation to bid, designed to limit independent bidding or competition.

The contents of the bid or bids have not been communicated by the bidder, or its employees, or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bids and will not be communicated to any such person prior to the official opening of the bid or bids. Contractor certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. The contractor certifies that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.

The Kentucky Educational Development Corporation collective bidding process is

conducted consistent with KRS Chapter 45A:345 through 45A:460, the Model Procurement Code and that the contents of the bid proposal and the actions taken by the bidder in preparing and submitting the bid proposal are in compliance with above sections of the Model Procurement Code.

The bidder is legally entitled to enter into contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, gratuities and kickbacks including those prohibited by the provisions of the Model Procurement Code (KRS Chapter 45A). Any employee or official of KEDC or member institution, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or things of value as an inducement or intended inducement, or in the procurement of business, or the giving of business, for or to or from, any person, or in open market seeking to make sales to the membership shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or fine in accord with state and/or federal laws.

3. **CERTIFICATION CONCERNING DISBARMENT AND SUSPENSION:** I certify on behalf of myself, the company and its key employees that I, the company, or its key employees have not been proposed for debarment, debarred, or suspended by KPC, the Commonwealth of Kentucky, or any Federal Agency and are not listed on the Excluded Parties List System provided by the United States Government General Services Administration at [www.epls.gov](http://www.epls.gov).
4. **AWARD:** After the review of the bid proposals, the KEDC Board or its designee may accept one or more bid contracts based criteria below and the needs of the members. In the case of identical bids, KEDC reserves the right to select and to award the contract by whatever method it chooses. If bidder's bid proposal is accepted, Bidder shall hereinafter be called contractor. The bid proposals will be evaluated based on the points awarded to each potential contractor utilizing the following scale subject to KRS 45A.490 to 45A.494, Reciprocal Preference for Resident Bidders. Item 1 below shall be prorated based on prices received; for instance the low price shall receive 50 points whereas the second lowest contractor who may be 10% higher, shall receive 45 points.

	POINTS
1. Total of weighted core package cost calculations	50
2. Approved Manufacturers Utilized	10
3. Past performance/Quality Assurance	40
POINT TOTAL	100

5. **CONTRACT PERIOD:** The contract period will end on September 30, 2013 plus any extensions. The contract may be extended on an annual basis by KEDC not to exceed ten years in total including the first contract period. KEDC shall notify the contractor of its intent to extend or not to extend the contract by August 1 of each year. If KEDC notifies contractor of intent to extend the contract by one year, contractor shall respond by August 15 that it either does or does not intend to extend the contract. Any necessary price increases or decreases should be submitted to KEDC by August 15 for the extended year. If price increases submitted are deemed excessive by KEDC then KEDC shall have cause to not extend the contract. Price change notifications will follow the same pattern as above for any years in which this contract is extended. KEDC reserves the right to extend the term for up to 180 days to continue a source of supply until new or replacement contracts are completed. Since this bid request is subject to multiple contracts being accepted, KEDC reserves the right to renew and/or solicit additional bids. Any contract extension is contingent upon written agreement of KEDC and the contractor. The bid will not be automatically extended beyond any current year unless expressly approved by KEDC. KEDC reserves the right on any contract extension to revise, update, or supplement the contract terms and conditions including the assessment of administrative fees to the contractor as needed to cover the cost of KEDC servicing the bid contract, bidding program, or procurement service for the members.
6. **PAYMENTS, AND ADMINISTRATIVE FEE:** : Each member shall be responsible for making payment to the contractor, unless KEDC has been established as the Purchasing Agent for the contractor, in which case, KEDC will coordinate orders and payments directly to the contractor with the individual members being the ship to party. Normally, members pay bills only after approval from the member board which meets monthly. KEDC reserves the right to negotiate upon mutual agreement to serve as Purchasing Agent for any Bid Contract including charging an additional administrative fee to the contractor beyond the two percent (2%) fee detailed below.

The contractor will be assessed an administrative fee of two percent (2%) on all purchases made by KPC members under this contract. The fee is to be included in the contractor's pricing, and cannot appear on the member's invoice. The contractor will remit payment to KEDC on a quarterly basis by the 25<sup>th</sup> day of the next month accompanied by an electronic sales report showing total amounts for all purchases made by members under this contract during the period of the bid.

**Period**

January - March

**Reporting and Payment  
Schedule**

April 25<sup>th</sup>

April - June

July 25<sup>th</sup>

July - September

October 25<sup>th</sup>

October - December

January 25<sup>th</sup>

The contractor will compile and provide to KEDC a quarterly report showing all purchases made by members under this contract in a format provided by KEDC. Contractor shall compile sales report by member district. The sales report shall be submitted electronically. Sales must be reported in the quarter in which the member is invoiced. It is the contractor's responsibility to track and report all purchases made by KPC members. All sales to KPC members are considered to be made under this contract unless the contractor holds an individual bid with the member. It is the vendor's responsibility to provide proof of individual bids.

KEDC will routinely request procurement data from participating KPC members to verify sales report accuracy. The contractor will make all administrative fee payments to KEDC by the 25<sup>th</sup> day of the succeeding month. All checks are to be made payable to KEDC and mailed to KEDC, 904 Rose Road, Ashland, KY 41102. In consideration of receiving a KPC PREFERRED VENDOR BID CONTRACT, bidder agrees to report and pay KEDC's administrative fees for all sales to KEDC/KPC districts even if orders are placed directly by the district to the contractor.

7. **PRICING:** Bid Contracts may be accepted from multiple bidders. Contract pricing and discounts shall remain in effect for the entire contract and any agreed upon contract extensions, however additional discounts and/or special pricing are encouraged and may be accepted when consistent with other terms and conditions of the contract and offered equally to all members. Price change notifications will follow the same pattern as above for any years in which this contract is extended. Additional discounts and/or special pricing are encouraged and may be accepted when consistent with other terms and conditions of the contract and offered equally to all members. Accumulated or group orders may be requested by KPC during the course of the contract period.

**All bid prices must include transportation and delivery charges to the location (school district, KEDC, etc.) specified during ordering. Fuel surcharges and other similar charges are not permitted.** Replacement and/or supplemental products that meet or exceed the minimum bid requirements may be added to this contract at the sole discretion of KEDC. Replacement/supplemental products shall be offered at a discount equal to or greater than the original award. The contractor shall submit, on its letterhead the request to add products/services. The request shall be submitted by an authorized representative of the organization. KEDC is under no obligation to accept the offerings.

The bidder shall provide each item on this bid to all KPC members at the same price. Bidders **MAY NOT** submit multiple discount levels for the same product by KPC member (i.e., Regional Bidding is **NOT** permissible).

KPC reserves the right to accumulate orders among KPC members to obtain volume discounts for the group.

8. **PROMPT PAYMENT DISCOUNT:** Contractor may provide a prompt payment percentage discount for invoice payments postmarked less than 30 days from the invoice date. The discount may take the form of either a deduction from the total invoice or a check in an amount equal to the same. Example: 1% discount for payment of invoices postmarked within 10 days of the invoice date.
9. **NON-ASSIGNABILITY OF AWARDED BID:** The bid award will be made only to the individual or entity which actually submits a bid. The awarded bid cannot be conveyed to an awarded bidder's successors or assigns without the prior, express approval of the Board of Directors of KEDC or its designee.
10. **DISTRIBUTION PARTNERS:** The awarded bidder may elect to utilize Distribution Partners for the handling of orders, payments, distribution of products and other functions as agreed to by the KEDC Board or its designee. A list of Distribution Partners to include Entity Name, Contact Name, Address, Phone Number, Email, and proposed service area (list of KPC members to be served) must be submitted to KEDC and approved prior to processing orders. All Distribution Partners are bound by the terms and conditions set forth in this bid contract.
11. **PARTICIPATING MEMBER INSTITUTIONS:** Any institution that is a member of the Kentucky Purchasing Cooperative (KPC) - hereinafter referred to as member or members - is eligible to utilize the Bid Contract; however this does not mean that all members will participate. The successful bidder(s) will be required to serve all eligible members.
12. **TRANSMITTAL OF ORDERS:** KEDC shall issue purchasing guidelines to KPC members. The members will use formal purchase orders in ordering from the awarded bidder. The successful bidder acknowledges that orders from KPC members may be transmitted from KEDC's office on the member's behalf. The successful bidder may use salespeople for in-person and/or telephone solicitation of orders in accordance with a mutually arrived schedule developed between the members and the awarded bidder.

KEDC has licensed the ESM Direct Buy module for the KPC online catalog. At KEDC's option, the vendor shall 1) provide an interface between their existing website and KEDC's online catalog utilizing "punch-out", and/or 2) provide a listing of items in an electronic format specified by KEDC (including description, pricing, picture of item, etc.)

to be imported into KEDC's online catalog, and/or 3) accept faxed orders, and/or 4) accept e-mailed orders. The vendor shall accept orders electronically from KEDC and/or KPC members. The vendor is responsible for the initial and on-going accuracy of item information in the on-line catalog and for all programming and configuration costs on their existing web site for Option 1 and for all costs associated with compiling the data file containing the list of items in the bid contract for Option 2. KEDC may provide setup assistance at an additional charge.

13. PURCHASE OF ITEMS NOT SPECIFICALLY LISTED IN THE CORE ITEM LIST (SECONDARY ITEMS): KPC members may exercise their rights to purchase all catalog and special order items not in the Core Item list from the contractor that has been awarded the contract. Catalog and special order items shall be quoted at MSRP less a fixed percentage discount (per your bid) and shall be subject to the same auditing provisions as bid items. The initial price quote on catalog and special order items shall become the official bid price for the remainder of the bid contract.
14. DELIVERY CHARGES: **All products or services procured from the Bid Contract are to be delivered free of freight charges (FOB destination).** All bid prices must include transportation and delivery charges to the location (school district, KEDC, etc.) specified during ordering. Fuel surcharges and other similar charges are not permitted.
15. QUANTITIES: It shall be understood that the bid contract will not obligate KPC or its members to purchase from the Bid Contract.
16. ITEM SUBSTITUTION AND OUT-OF-STOCK BACK-ORDERS: No substitutions are allowed without prior written authorization from the member. Member must be notified if item is out of stock, backordered or if timely delivery cannot be made. Upon member notification, the contractor must receive written directions from the member on how to proceed, i.e. cancel, process, etc.
17. RETURNS: The successful bidder must provide a Return Material Authorization within 1 working day of the request by KPC member. Returned materials shall be restocked at no charge to the member (special order and custom crafted items excluded).
18. RECALLS: The contractor shall notify KPC and its members immediately of any products recalls. Any products that have been recalled and have been delivered shall be issued a credit and/or a comparable substitute immediately. All costs associated with voluntary and involuntary product recalls shall be borne by the awarded vendor.

19. **PRODUCT EVALUATION:** Samples requested must be furnished free of expense to KPC and KPC members for evaluation for a period of thirty (30) days. Samples shall be returned at the bidder's or bidder's Distribution Partner's expense.

20. **PROMOTION:** KPC actively markets all Prime and Preferred Vendors to member districts, which includes the company logo and contact information on the KPC website, a notice of the winning bid contract(s) sent to every KPC member, and promotion of all KPC Prime and Preferred Vendors during regular district visits by KPC staff. Vendors are expected to provide promotional materials and participate in regional conferences, district shows, and trainings.

The winning bidder or bidder's Distribution Partners will also be expected to provide a permanently installed showcase of their equipment in a meeting room at the KEDC offices in Ashland, Kentucky. This room will also be used on a daily basis by teachers and administrators from KPC member districts for meetings and professional development.

21. **CONTRACTOR COMMITMENT:** Each contractor is required to make three basic commitments to insure the overall success of the statewide program:

1. **Corporate Commitment** – A commitment that KPC has the support of senior management, and that KPC is the primary offering to K-12 educational entities statewide. The contractor shall make existing K-12 clients aware of the KPC contract and upon the member's request transitioned to the contractor's KPC contract.
2. **Pricing Commitment** – A commitment that KPC pricing is the lowest available pricing (net to buyer) to KPC entities and a further commitment that, if a KPC entity is eligible for lower pricing through a state, regional, or local contract, the vendor will match the pricing under KPC.
3. **Sales Commitment** – A commitment that the supplier will aggressively market KPC statewide and that the sales force will be trained, engaged, and committed to offering KPC to K-12 entities statewide with a further commitment that all KPC sales be accurately and timely reported to KPC.

22. **PENALTY:** The designated supplier(s) reciprocally agrees to provide total requirements as listed herein, thereby minimizing occurrences when a member may have to seek other interim product sources. Failure to deliver 100% of stock items -- within 10 business days -- shall be considered a default.

23. **PRODUCT AND SAFETY INFORMATION:** The successful bidder shall provide upon request by any member, the most recent MSDS information sheets for any products the

vendor may deliver to said member. It is the vendor's responsibility to comply with all local, state, and federal regulations.

24. **NOTICES:** Notices under this Agreement are sufficient if given by nationally recognized overnight courier service, certified mail (return receipt requested), facsimile with electronic confirmation or personal delivery to the other party if given to the last known address. Notice is effective: (a) when delivered personally, (b) three business days after sending by certified mail, (c) on the business day after sending by a nationally recognized courier service, or (d) on the business day after sending by facsimile with electronic confirmation to the sender. A party may change its notice address by giving notice in accordance with this section.
25. **SEVERABILITY:** If any provision of this Agreement is determined by any court or governmental authority to be unenforceable, the parties intend that this Agreement be enforced as if the unenforceable provisions were not present and that any partially valid and enforceable provisions be enforced to the extent that they are enforceable.
26. **NO WAIVER:** A party does not waive any right under this Agreement by failing to insist on compliance with any of the terms of this Agreement or by failing to exercise any right hereunder. Any waivers granted hereunder are effective only if recorded in a writing signed by the party granting such waiver.
27. **CUMULATIVE RIGHTS/CONSTRUCTION:** The rights and remedies of the parties under this Agreement are cumulative, and either party may enforce any of its rights or remedies under this Agreement or other rights and remedies available to it at law or in equity.
28. **CONTRACTOR CERTIFICATION:** Installation shall be under the direct supervision of an industry certified installer who must be present at all times when work is performed for any KPC member. **Proof of certification for all supervising installers must be submitted with the bid.** It is the responsibility of the contractor to notify KEDC of any changes to the certification status of their installers within 14 calendar days. Manufacturer certification programs may be accepted in lieu of industry certification at KEDC's discretion.
29. **INSTALLATION:** For all installation services provided under this bid the bidder agrees to complete all work within the guidelines set forth. KPC reserves the right to inspect all work performed under this contract. KPC will correct or require correction of substandard work at the bidder's expense.



Substandard work is a default of the bid contract and grounds for immediate termination of the contract.

30. OTHER CONDITIONS:

- A. Contractors shall be in compliance and will comply with any and all local, state, and federal laws and regulations related to this bid and the rendering of goods and /or services.
- B. This contract shall be governed in all respects as to validity, construction, capacity, performance, or otherwise by the laws of the Commonwealth of Kentucky.
- C. Contractors providing services under this bid invitation, herewith assure KEDC they are conforming to the provisions of the Civil Rights Act of 1964 as amended.
- D. Kentucky Sales and Use Tax Certificate of Exemption Form will be issued upon request.
- E. Contractor shall provide access to the grantee, the sub grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions (7 CFR § 3016.36).
- F. Contractor shall retain all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed (7 CFR § 3016.36).
- G. In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (800) 795-3272 or (202) 720-6382 (TTY). USDA is an equal opportunity provider and employer.
- H. Contractor is and shall remain in compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
- I. Contractor is and shall remain in compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
- J. Contractor is and shall remain in compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
- K. Contractor is and shall remain in compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

- L. Contractor is and shall remain in compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C.) 187 [h], Section 508 of the Clean Water Act (33 U.S.C. 1368, Executive Order 11738 and Environmental Protection Agency (EPA) regulations, (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included in the EPA list of violated facilities.
- M. Contractor is and shall remain in compliance with all mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).
- N. By signing this document, the contractor certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. The contractor certifies that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.
- O. Prohibition against conflicts of interest, gratuities, and kickbacks: Any employee or official of KEDC or member institution, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or things of value as an inducement or intended inducement, or in the procurement of business, or the giving of business, for or to or from, any person, or in open market seeking to make sales to the membership shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or fine in accord with state and/or federal laws.
- P. The bidder is legally entitled to enter into contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, including those prohibited by provisions of KRS 164.390, KRS 61.092-61.096, and KRS 42.990.
- Q. The provisions of KRS 365.080 and KRS 365.090 which permit the regulation of resale price by contract, does not apply to sales to the State.
- R. KEDC reserves the right to reject any and/or all bids and to waive informalities.

## UNIT PRICING FOR CONSTRUCTION OF FOAM ROOFS

### BASIC FOAM ROOF SYSTEMS

#### 20 Year Manufacturer's Warranty

Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)
1	Roof System UL Class A	20 Year Manufacturers	1-1/2 inches (+1/4" - 0") 2.7 pcf density	Apply 2.0 gallons per 100 sf of Manufacturers Coating in one application for a finished average thickness of 15 dry mils	Apply 1.5 gallons per 100 sf of Manufactures Coating in one application for a finished average thickness of 10 dry mils	Broadcast 35 - 45lbs per 100 sf of granules into wet top coating.	Coating at any point to be an average thickness of 25 dry mils.	Primarily for new and replacement roof systems. Can be applied over a properly prepared existing dry roof system.	>10,000 s.f. <25,000 sf	Square Foot	100	
2	Roof System UL Class A	20 Year Manufacturers	1-1/2 inches (+1/4" - 0") 3 pcf density K-factor 0.14-0.16	Apply 2.0 gallons per 100 sf of Manufacturers Coating in one application for a finished average thickness of 15 dry mils	Apply 1.5 gallons per 100 sf of Manufactures Coating in one application for a finished average thickness of 10 dry mils	Broadcast 35 - 45lbs per 100 sf of granules into wet top coating.	Coating at any point to be an average thickness of 25 dry mils.	Primarily for new and replacement roof systems. Can be applied over a properly prepared existing dry roof system. Refer to Roofing Standard.	>25,000 s.f. <50,000 sf	Square Foot	100	
3	Roof System UL Class A	20 Year Manufacturers	1-1/2 inches (+1/4" - 0") 3 pcf density K-factor 0.14-0.16	Apply 2.0 gallons per 100 sf of Manufacturers Coating in one application for a finished average thickness of 15 dry mils	Apply 1.5 gallons per 100 sf of Manufactures Coating in one application for a finished average thickness of 10 dry mils	Broadcast 35 - 45lbs per 100 sf of granules into wet top coating.	Coating at any point to be an average thickness of 25 dry mils.	Primarily for new and replacement roof systems. Can be applied over a properly prepared existing dry roof system. Refer to Roofing Standard.	>50,000 s.f. <75,000 sf	Square Foot	100	

4	Roof System UL Class A	20 Year Manufacturers	1-1/2 inches (+1/4" - 0") 3 pcf density K-factor 0.14-0.16	Apply 2.0 gallons per 100 sf of Manufacturers Coating in one application for a finished average thickness of 15 dry mils	Apply 1.5 gallons per 100 sf of Manufactures Coating in one application for a finished average thickness of 10 dry mils	Broadcast 35 - 45lbs per 100 sf of granules into wet top coating.	Coating at any point to be an average thickness of 25 dry mils.	Primarily for new and replacement roof systems. Can be applied over a properly prepared existing dry roof system. Refer to Roofing Standard.	>75,000 s.f. <	Square Foot	100	
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### LABOR AND MATERIALS ADDERS FOR FOAM ROOF SYSTEMS

#### Additional Uniformly Applied Foam (When Specified or Required)

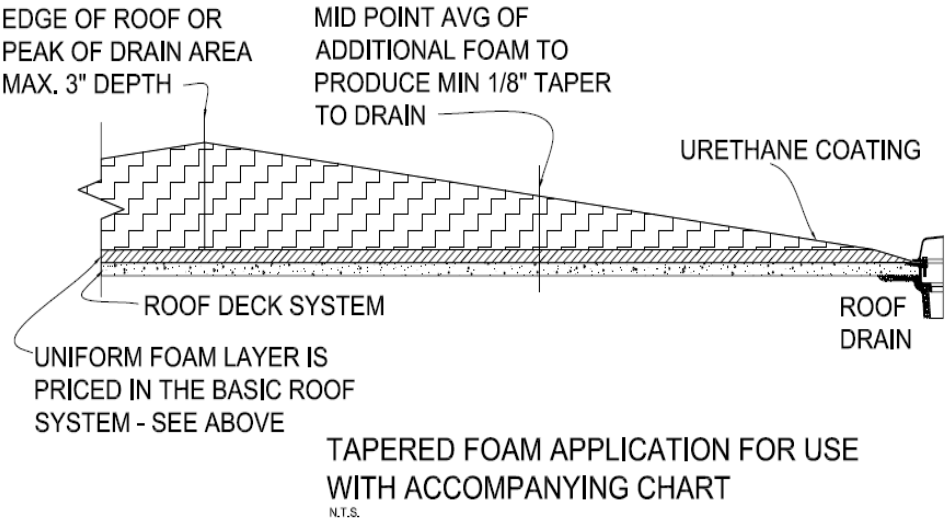
*The basic foam roof systems, defined elsewhere in this unit price contract, lists the minimum foam thicknesses required for each system. Occasionally there will be a requirement or need for additional thicknesses of foam for a roof system. This item provides for pricing the additional foam required.*

Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)
5	Each additional ½ inch of applied foam		Minimum 1/2 inch (+1/4" - 0") per sq					Apply uniformly	<25,000 sf	Square Foot	100	
6	Each additional ½ inch of applied foam		Minimum 1/2 inch (+1/4" - 0") per sq					Apply uniformly	>25,000 sf	Square Foot	100	
SUBTOTAL												

### Additional Non-tapered Insulation (When Specified or Required)

*The basic foam roof systems, defined elsewhere in this unit price contract, lists the minimum foam thicknesses required for each system. Occasionally there will be a requirement or need for additional thicknesses of non-foamed-in-place insulation for a roof system. This item provides for pricing the additional insulation required.*

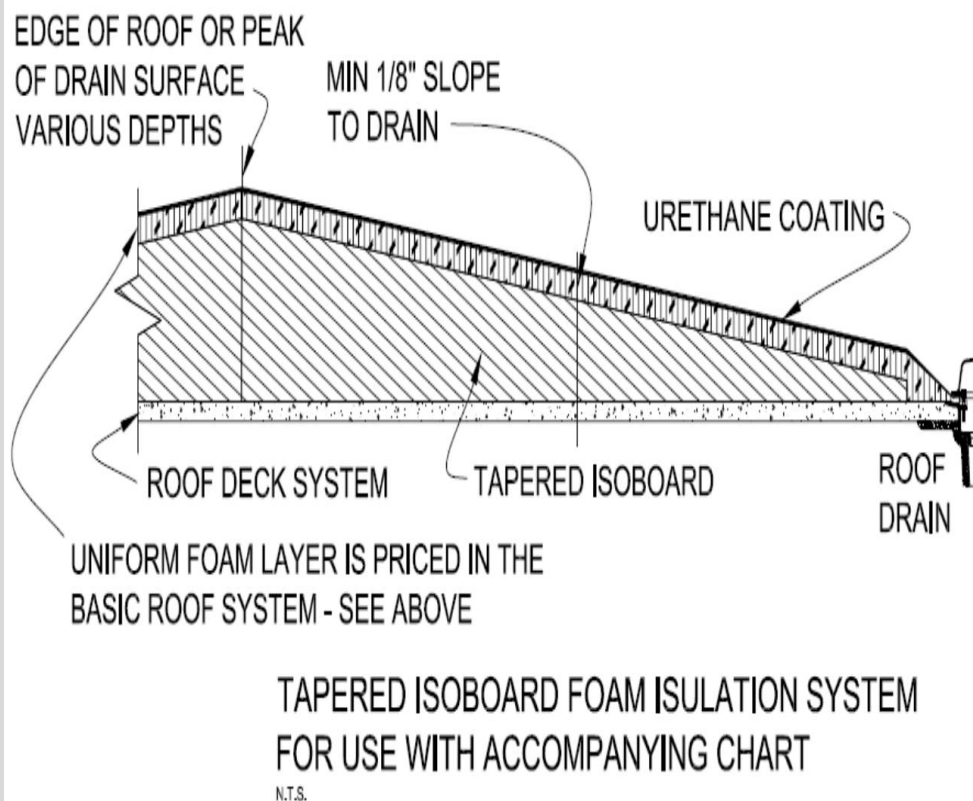
Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)
7	Each additional 1-½ inch of Isoboard non-tapered							Mechanically attached	<25,000 sf	Square Foot	100	
8	Each additional 1-½ inch of Isoboard non-tapered							Mechanically attached	>25,000 sf	Square Foot	100	
9	Each additional 1-½ inch of Expanded Polystyrene insulation non-tapered							EP shall be fully adhered using specially formulated adhesive foam as manufactured by BASF.	<25,000 sf	Square Foot	100	
10	Each additional 1-½ inch of Expanded Polystyrene insulation non-tapered							EP shall be fully adhered using specially formulated adhesive foam as manufactured by BASF.	>25,000 sf	Square Foot	100	
<b>SUBTOTAL</b>												

Tapered Foam Adder - When Required for positive flow to drains or scuppers													
On roofs with flat decks or minimal slope, where additional foam is chosen to produce taper and therefore positive flow to drains and/or scuppers, the maximum thickness at the highest ridge, wall, parapet, and/or expansion joint will be 3 inches. A thickness of 4 inches may be used but only after agreement has been reached between the Owner and the Contractor.													
Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)	
11	Maximum thickness 2 inches and Average thickness 1 inches							K = 0.15 BTU/hr ft2 oF/in.	32' x 32' with average 2.0 thickness	Square Foot	100		
12	Maximum thickness 3 inches and Average thickness 1.5 inches							K = 0.15 BTU/hr ft2 oF/in.	32' x 32' with average 2.0 thickness	Square Foot	100		
13	Maximum thickness 4 inches and Average thickness 2 inches (only with Owner/Contractor agreement)							K = 0.15 BTU/hr ft2 oF/in.	32' x 32' with average 2.0 thickness	Square Foot	100		
											SUBTOTAL		

## Tapered Insulation Adder - When Required and Specified for Positive Flow to Drains or Scuppers

*On roofs with flat decks or minimal slope, where foam thickness required to produce taper would exceed 3 inches at the highest ridge, wall, parapet, and/or expansion joint, when specified a tapered insulation system shall be used. The two systems listed are for Isoboard (to be mechanically fastened) and Expanded Polystyrene (EP) tapered insulation (to be fully adhered). The Owner will specify which system is to be used.*

Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)
14	Isoboard - Maximum thickness 9 inches and Average thickness 4.5 inches							Isoboard shall be mechanically attached	72' x 72' with average 4.5 thickness	Square Foot	100	
15	Isoboard - Maximum thickness 8 inches and Average thickness 4 inches							Isoboard shall be mechanically attached	64' x 64' with average 4.0 thickness	Square Foot	100	
16	Isoboard - Maximum thickness 7 inches and Average thickness 3.5 inches							Isoboard shall be mechanically attached	56' x 56' with average 3.5 thickness	Square Foot	100	
17	Isoboard - Maximum thickness 6 inches and Average thickness 3 inches							Isoboard shall be mechanically attached	48' x 48' with average 3.0 thickness	Square Foot	100	
18	Isoboard - Maximum thickness 5 inches and Average thickness 2.5 inches							Isoboard shall be mechanically attached	40' x 40' with average 2.5 thickness	Square Foot	100	



19	Isoboard - Maximum thickness 4 inches and Average thickness 2 inches		Isoboard shall be mechanically attached	32' x 32' with average 2.0 thickness	Square Foot	100	
						<b>SUBTOTAL</b>	

### **Tapered Insulation Adder - When Required and Specified for Positive Flow to Drains or Scuppers**

*On roofs with flat decks or minimal slope, where foam thickness required to produce taper would exceed 3 inches at the highest ridge, wall, parapet, and/or expansion joint, when specified a tapered insulation system shall be used. The two systems listed are for Isoboard (to be mechanically fastened) and Expanded Polystyrene (EP) tapered insulation (to be fully adhered). The Owner will specify which system is to be used.*

Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)
20	Expanded Polystyrene - Maximum thickness 9 inches and Average thickness 4.5 inches	<p style="text-align: center;"><b>CONSTRUCTION DETAIL FOR <u>EXPANDED POLYSTYRENE</u> IS SIMILAR TO ISOBOARD DETAIL ABOVE</b></p>						EP shall be fully adhered using specially formulated adhesive foam as manufactured by BASF.	72' x 72' with average 4.5 thickness	Square Foot	100	
21	Expanded Polystyrene - Maximum thickness 8 inches and Average thickness 4 inches							EP shall be fully adhered using specially formulated adhesive foam as manufactured by BASF.	64' x 64' with average 4.0 thickness	Square Foot	100	
22	Expanded Polystyrene - Maximum thickness 7 inches and Average thickness 3.5 inches							EP shall be fully adhered using specially formulated adhesive foam as manufactured by BASF.	56' x 56' with average 3.5 thickness	Square Foot	100	



23	Expanded Polystyrene - Maximum thickness 6 inches and Average thickness 3 inches	<div>CONSTRUCTION DETAIL FOR <u>EXPANDED POLYSTYRENE</u> IS SIMILAR TO ISOBOARD DETAIL ABOVE</div>	EP shall be fully adhered using specially formulated adhesive foam as manufactured by BASF.	48' x 48' with average 3.0 thickness	Square Foot	100	
24	Expanded Polystyrene - Maximum thickness 5 inches and Average thickness 2.5 inches		EP shall be fully adhered using specially formulated adhesive foam as manufactured by BASF.	40' x 40' with average 2.5 thickness	Square Foot	100	
25	Expanded Polystyrene - Maximum thickness 4 inches and Average thickness 2 inches		EP shall be fully adhered using specially formulated adhesive foam as manufactured by BASF.	32' x 32' with average 2.0 thickness	Square Foot	100	
					SUBTOTAL		

<b>Silicone Roof Coating Only - Contractor Supplied - Spray or Roll</b>												
<i>Coatings to be applied to existing roofs for warranty upgrades or on roofs requested by the Owner.</i>												
Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)
26	Apply Bayblock base coating to Owner cleaned surface	One year labor and material by Contract or		Apply 2 gallons per 100 sf of BSNA 3400 Series Coating in one applications for a finished average thickness of 14 dry mils				Apply to Clean Surface. Cleaning by Owner.	<25,000 sf	Square Foot	100	
27	Apply Bayblock base coating to Owner cleaned surface	One year labor and material by Contract or		Apply 2 gallons per 100 sf of BSNA 3400 Series Coating in one applications for a finished average thickness of 14 dry mils				Apply to Clean Surface. Cleaning by Owner.	>25,000 sf	Square Foot	100	
28	Apply Bayblock top coating to Owner cleaned surface	One year labor and material by Contract or		Apply 1 gallon per 100 sf of BSNA 3400 Series Coating in one application for a finished average thickness of 7 dry mils				Apply to Clean Surface. Cleaning by Owner.	<25,000 sf	Square Foot	100	
29	Apply Bayblock top coating to Owner cleaned surface	One year labor and material by Contract or		Apply 1 gallon per 100 sf of BSNA 3400 Series Coating in one application for a finished average thickness of 14 dry mils				Apply to Clean Surface. Cleaning by Owner.	>25,000 sf	Square Foot	100	

30	Apply Bayblock base coating to contractor cleaned surface	One year labor and material by Contract or		Apply 2 gallons per 100 sf of BSNA 3400 Series Coating in one application s for a finished average thickness of 26 dry mils				Contractor to clean surface	<25,000 sf	Square Foot	100	
31	Apply Bayblock base coating to contractor cleaned surface	One year labor and material by Contract or		Apply 2 gallons per 100 sf of BSNA 3400 Series Coating in one applications for a finished average thickness of 14 dry mils				Contractor to clean surface	>25,000 sf	Square Foot	100	
32	Apply Bayblock top coating to contractor cleaned surface	One year labor and material by Contract or		Apply 1 gallon per 100 sf of BSNA 3400 Series 70611 Coating in one application for a finished average thickness of 14 dry mils				Contractor to clean surface	<25,000 sf	Square Foot	100	
33	Apply Bayblock top coating to contractor cleaned surface	One year labor and material by Contract or		Apply 1 gallon per 100 sf of BSNA 3400 Series Coating in one application for a finished average thickness of 14 dry mils				Contractor to clean surface	>25,000 sf	Square Foot	100	
34	Apply Bayblock base coating to Owner cleaned surface	One year labor and material by Contract or		Apply 2 gallons per 100 sf of BSNA 3400 Series Coating in one applications for a finished average thickness of 14 dry mils				Apply to Clean Surface. Cleaning by Owner.	<25,000 sf	Square Foot	100	

35	Apply Bayblock base coating to Owner cleaned surface	One year labor and material by Contract or		Apply 2 gallons per 100 sf of BSNA 3400 Series Coating in one applications for a finished average thickness of 14 dry mils				Apply to Clean Surface. Cleaning by Owner.	>25,000 sf	Square Foot	100	
36	Apply Bayblock top coating to Owner cleaned surface	One year labor and material by Contract or		Apply 1 gallon per 100 sf of BSNA 3400 Series Coating in one application for a finished average thickness of 7 dry mils				Apply to Clean Surface. Cleaning by Owner.	<25,000 sf	Square Foot	100	
										<b>SUBTOTAL</b>		

## Granule Application - For Applications Not Included in Basic Roof Systems.

Granules application information is included in the basic roof systems above. This line item is for granule application at the Owner's request.

Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)
37	Apply and encapsulate granules on roof surface	One year labor and material by Contractor				Apply 3/4 gallon per 100 sf of BSNA 3400 Series in one application for a finished average thickness to yield 5 dry mils. Broadcast 30 - 35lbs per 100 sf of granules into wet coating. When dry, remove excess granules and fully encapsulate with BSNA top coat at a minimum rate of 1 gallon per 100 sf.			<25,000 sf	Square Foot	100	
38	Apply and encapsulate granules on roof surface	One year labor and material by Contractor				Apply 3/4 gallon per 100 sf of BSNA 3400 Series in one application for a finished average thickness to yield 5 dry mils. Broadcast 30 - 35lbs per 100 sf of granules into wet coating. When dry, remove excess granules and fully encapsulate with BSNA top coat at a minimum rate of 1 gallon per 100 sf.			>25,000 sf	Square Foot	100	
SUBTOTAL												

<b>Remove Existing Roof System</b>												
<i>Old roof removal is not included in the basic roof costs above. The Contractor must add old roof and ballast removal from the following items.</i>												
Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)
39	Remove asbestos (ACM) roof system with or without gravel							Remove and dispose	Lot	Square Foot	100	
40	Remove asbestos (ACM) roof flashing only							Remove and dispose	Lot	Square Foot	100	
41	Remove EPDM/Single Ply roof system w/o ballast							Remove and dispose	Lot	Square Foot	100	
42	Remove EPDM/Single Ply roof system w/stone ballast							Remove and dispose	Lot	Square Foot	100	
43	Remove non-ACM BUR roof system with or without ballast							Remove and dispose	Lot	Square Foot	100	
44	Vacuum/remove and dispose of ballast from existing membrane							Remove and dispose	Lot	Square Foot	100	
45	Remove and dispose of abandoned roof top appurtenances (unused fans, etc.)							Remove and dispose	Lot	Each	1	
<b>SUBTOTAL</b>												

## Miscellaneous Items

To complete the project quote, the Contractor is to choose from the following items as required by the roof drawings and specification for a specific project.

Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)
46	Install steel plate over exposed roof deck penetrations							At location where fans are removed, etc. All sizes.		Each	1	
47	Caulking ½" Bead; install only	5 year labor and material by Contractor						Urethane Caulk		Linear Foot	1000	
48	Caulking ½" Bead; remove old and install new	5 year labor and material by Contractor						Urethane Caulk		Linear Foot	1000	
49	Install foamed-in-place walkway and platform supports supplied by Owner (walkways and platforms by others)							Details attached		Each	50	
50	Construct 4' wood walkway including Contractor supplied foamed-in-place supports	One year labor and material by Contractor						Details attached; construct w/ treated lumber		Linear Foot	100	

51	Construct wooden platform including Contractor supplied supports at Owner designated locations	One year labor and material by Contractor						Details attached; construct w/ treated lumber		Each	1	
52	Install precast concrete pads at Owner designated locations							Details attached - finished elevation must be higher than the foam		Each	1	
53	Install approved OSHA type ladder up to 17 feet in height (safety cage not required)	One year labor and material by Contractor						Includes top platform and safety rails		Each	1	
54	Install OSHA type ladder up to 25 feet	One year labor and material by Contractor						Install up to 25 feet; includes cage above 17 feet and top platform with safety rails		Each	1	
55	Install OSHA type ladder up to 25 feet above bottom 25 feet section	One year labor and material by Contractor						Install above 25 feet; includes full safety cage and top platform with safety rails		Each	1	
56	Steel Roof Drain Covers									Each	10	
57	Lower existing drain to deck							When required only		Each	1	



45	Install metal covers to waterproof under existing roof top equipment setting on open curbs							This requirement is for low equipment curbs where proper application of foam and coating under the equipment is restricted		Each	1	
46	Installation of mechanically fastened 5/8-inch gypsum board on metal deck							Applied to metal decks; for use under foam or vapor barrier		Square Foot	100	
47	Installation of mechanically fastened 1/2-inch fiberboard							Asphalt coated 6 sides - Applied over existing roof systems		Square Foot	100	
48	Installation of mechanically fastened 1/2-inch DensDeck							Applied over existing roof systems or to metal decks; for use under foam or vapor barriers		Square Foot	100	
49	Install self-adhering vapor barrier							Kwik-Ply 30 mil self-adhering membrane by Hyload, Inc. applied to underlayment board attached to metal deck.		Square Foot	100	
50	Furnish and Apply asphaltic primer when required (Tremco QD or Mulehide)							Apply primer Hyload vapor barrier when required for bonding		Square Foot	100	

51	Foam and coat around Owner installed rooftop equipment	One year labor and material by Contractor	Foam shall be applied to form proper drainage and not appear as a patch	Apply 2 gallons per 100 sf of BSNA 3400 Series 70620 Coating in one application for a finished average thickness of 26 dry mils						Each	1	
<b>SUBTOTAL</b>												

<b>Gutters - Associated with Foam Roof Projects Only</b>												
<i>The following are for those roofs on which a gutter requirement is specified. The price includes new installation as well as removal and replacement.</i>												
Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)
52	24 gauge Steel 6" Box Gutters & 3.5" x 4" 24 gauge steel Downspouts							Installed		Linear Foot	100	
53	6" K Copper gutters & 3.5" x 4" copper corrugated Downspouts							Installed		Linear Foot	100	
<b>SUBTOTAL</b>												

## Coping, Flashing, and Foam Stops - Associated with Foam Roof Projects Only

*The following are for those roofs on which coping, flashing, and/or foam stops are specified. Price includes new installation as well as removal and replacement. Counterflashing, whether it be metal, foam or coatings installed on existing walls, shall not be installed above existing through-wall flashing or existing regelets unless approved by the Owner.*

Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)
54	22 gauge Galvanized Coping Cap up to 18" width	5 year labor and material by Contractor						Installed		Linear Foot	100	
55	0.040 Aluminum Cap up to 18" width	5 year labor and material by Contractor						Installed		Linear Foot	100	
56	20 oz. Copper Coping Cap up to 18" width	5 year labor and material by Contractor						Installed		Linear Foot	100	
57	16 oz. Copper Coping Cap up to 18" width	5 year labor and material by Contractor						Installed		Linear Foot	100	
58	22 gauge Stainless Steel Coping Cap up to 18" width	5 year labor and material by Contractor						Installed		Linear Foot	100	
59	0.040 gauge Aluminum Counter Flashing	5 year labor and material by Contractor						Installed		Linear Foot	100	
60	20 oz. Copper Counter flashing	5 year labor and material by Contractor						Installed		Linear Foot	100	
61	16 oz. Copper Counter Flashing	5 year labor and material by Contractor						Installed		Linear Foot	100	

62	22 gauge Stainless Steel Counter Flashing	5 year labor and material by Contractor						Installed		Linear Foot	100	
63	24 Gauge Galvanized foam stops	5 year labor and material by Contractor						Installed		Linear Foot	100	
64	0.040 Aluminum Foam Stops	5 year labor and material by Contractor						Installed		Linear Foot	100	
65	16 oz. copper foam stops	5 year labor and material by Contractor						Installed		Linear Foot	100	
66	24 gauge Stainless Steel foam stops	5 year labor and material by Contractor						Installed		Linear Foot	100	
											<b>SUBTOTAL</b>	

<b>Roof Hatches - Associated with Foam Roof Projects Only</b>												
<i>The following are for those roofs on which roof hatches are specified.</i>												
Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)
67	3' x 3' Roof Hatch; hinged, counterbalanced and locking	Manufacturer warranty period and Contractor Labor						Installed		Each	1	
68	3' x 5' Roof Hatch; hinged, counterbalanced and locking	Manufacturer warranty period and Contractor Labor						Installed		Each	1	
											<b>SUBTOTAL</b>	

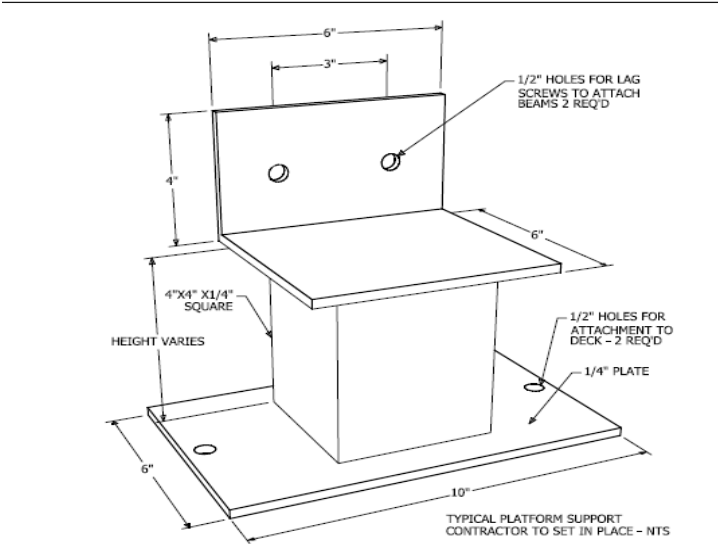
<b>Site and Setup Items</b>												
<i>The Contractor is to add items from the following list of items as required by the specification and drawings for a specific roof project. Requires Owner agreement and approval.</i>												
Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)
69	Setup costs above 3 stories									Per Project	1	
70	Cost to mask/cover air intake - under 200 sf									Each	1	
71	Cost to mask/cover air intake - over 200 sf									Each	1	
72	Use of Wind Screen on rooftop to prevent overspray									Per Project	1	
73	Building Masking to prevent overspray									Per Project	1	
74	Staging area protection and return to original condition									Per Project	1	
<b>SUBTOTAL</b>												

## Labor Adders for Foam Roof Projects

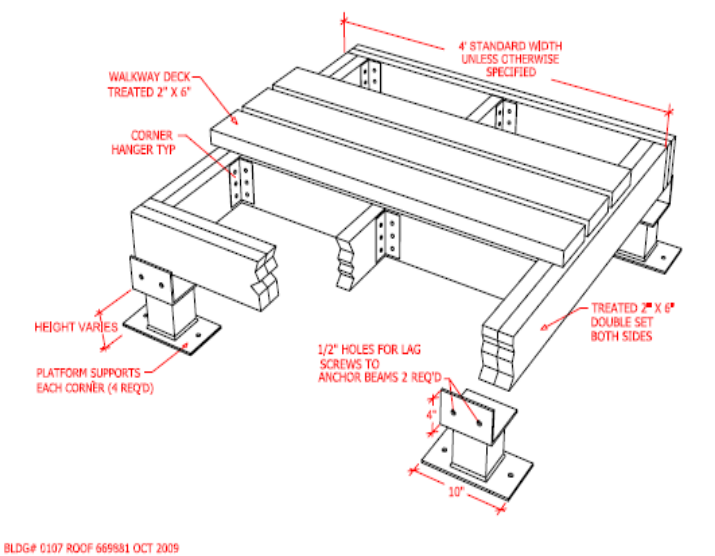
*The following items are for contractor incurred costs created by or requested by the Owner.*

Item No.	Item	Warranty Period	Minimum Foam Requirement	Minimum Base Coating Requirements	Minimum Top Coating Requirements	Granule Application (3M Ceramic)	Average Finished Coating Thickness	Comments	Roof Area	Measuring Unit	Units	Total Cost \$ (Bidder To Enter)
75	Additional cost for compulsory work-time outside normal hours									Man Hour	1	
76	Addition cost for unforeseen work operations not associated with the roof but which must be handled by the Contractor to complete the project							Items to be agreed upon and approved by the Purchasing Division		Man Hour	1	
77	One-time charge per day for minor work items requested by the Owner: Example - foam and coat around a newly installed roof-top unit.		Includes required foam	Includes required coating and granules				Items to be agreed upon and approved by the Purchasing Division		Per Hour	1	
78	Adder for construction of less than 500 square feet of foam roof of any basic roof system		Foam thickness to match that of the required basic roof system being constructed					Tapered foam not included		Square Foot	100	
SUBTOTAL												

<b>TOTAL - LABOR AND MATERIALS ADDERS FOR FOAM ROOF SYSTEMS - ITEMS 28 THROUGH 119</b>	
<b>TOTAL - LINE ITEMS 1 THROUGH 27</b>	
<b>TOTAL - LINE ITEMS 28 THROUGH 98</b>	
<b>TOTAL UNIT PRICE CONTRACT BID - ALL ITEMS 1 THROUGH 98</b>	

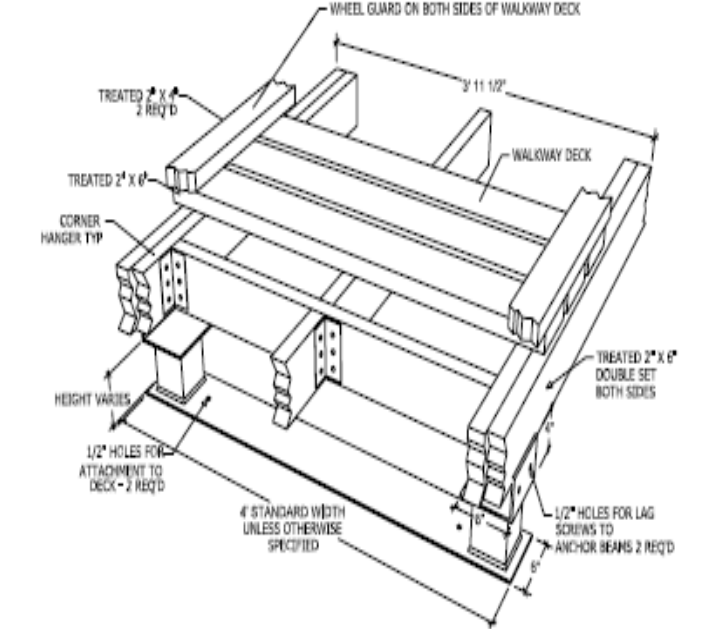
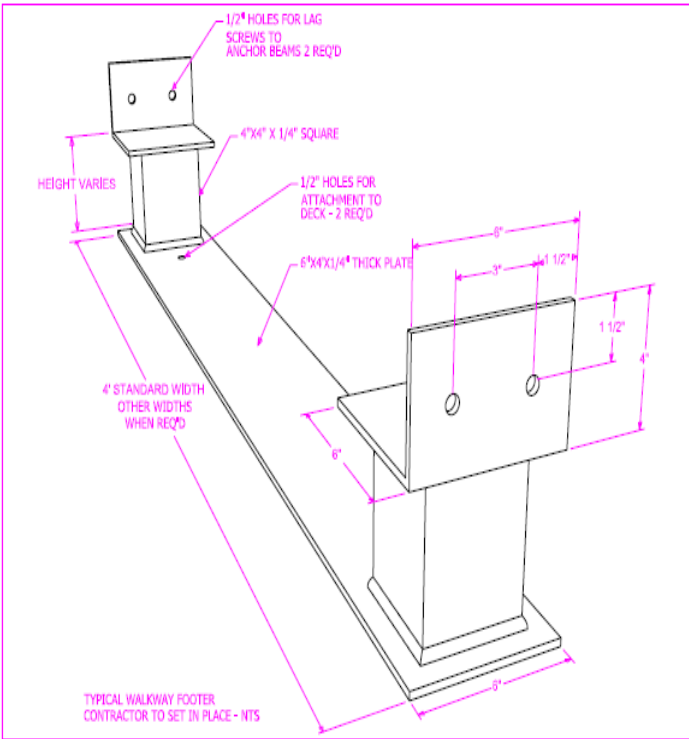


PLATFORM SUPPORT DETAIL



BLDG# 0107 ROOF 669981 OCT 2009

PLATFORM ASSEMBLY DETAIL



WALKWAY SUPPORT ASSEMBLY DETAIL

Date: \_\_\_\_\_ To: (Owner) \_\_\_\_\_

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

City, County: \_\_\_\_\_

Name of Contractor/Supplier: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Business Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

Having carefully examined the Instructions to Bidders, Contract Agreement, General Conditions, Supplemental Conditions, Specifications, and Drawings, on the above referenced project, the undersigned bidder proposes to furnish all labor, materials, equipment, tools, supplies, and temporary devices required to complete the work in accordance with the contract documents and any addenda listed below for the price stated herein.

Addendum \_\_\_\_\_ (Insert the addendum numbers received or the word "none" if no addendum received.)

BASE BID

**See Unit Pricing for Construction of Foam Roofs pp. 26-46.**

For the construction required to complete the work, in accordance with the contract documents, I/We submit the following lump sum price of:

\_\_\_\_\_ Dollars & \_\_\_\_\_ Cents  
Use Figures Use Words

ALTERNATE BIDS (If applicable and denoted in the Supplemental Conditions)

For omission from or addition to those items, services, or construction specified in the Supplemental Conditions by alternate number, the following lump sum price will be added or deducted from the base bid:

Alternate Bid No. 1	(Add/Deduct)	\$ _____
Alternate Bid No. 2	(Add/Deduct)	\$ _____
Alternate Bid No. 3	(Add/Deduct)	\$ _____
Alternate Bid No. 4	(Add/Deduct)	\$ _____



## UNIT PRICES

**See Unit Pricing for Construction of Foam Roofs pp. 26-46.**

Indicate on the lines below those unit prices to determine any adjustment to the contract price due to changes in work or extra work performed under this contract. The unit prices shall include the furnishing of all labor and materials, cost of all items, and overhead and profit for the Contractor, as well as any subcontractor involved. These unit prices shall be listed in units of work.

WORK	PRICE	UNIT
1. _____	\$ _____	/ _____
2. _____	\$ _____	/ _____
3. _____	\$ _____	/ _____
4. _____	\$ _____	/ _____
5. _____	\$ _____	/ _____
6. _____	\$ _____	/ _____
7. _____	\$ _____	/ _____
8. _____	\$ _____	/ _____
9. _____	\$ _____	/ _____
10. _____	\$ _____	/ _____

(Provide attachment for additional unit prices)

**NOTE: The bidder shall submit the above list of unit prices with the bid.**

## LIST OF PROPOSED SUBCONTRACTORS

List on the lines below each major branch of work and major material category for this project and the subcontractor or supplier involved with that portion of work. If the branch of work is to be done by the Contractor, so indicate.

The listing of more than one subcontractor in a work category shall invalidate the bid.

The listing of the bidder as the subcontractor for a work category certifies that the bidder has in current employment, skilled staff and necessary equipment to complete that category. The architect/engineer will evaluate the ability of all listed subcontractors to complete the work and notify the owner. Listing of the bidder as the subcontractor may invalidate the bid should the architect's review indicate bidder does not have skilled staff and equipment to complete the work category at the time the bid was submitted.

BRANCH OF WORK/MATERIAL CATEGORY	SUBCONTRACTOR/SUPPLIER
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____

(Provide attachment for additional work/material - subcontractor/supplier)

**NOTE: The bidder shall submit the above list of subcontractors with the bid.**

LIST OF MATERIALS/MANUFACTURERS

MATERIAL DESCRIPTION BY SPECIFICATION DIVISION AND CATEGORY		MANUFACTURER
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____

(Provide attachment for additional material/manufacturers.)

**NOTE: The bidder shall submit the above list of materials with the bid.**

TIME LIMIT FOR EXECUTION OF CONTRACT DOCUMENTS

In the event that a bidder's proposal is accepted by the Owner and such bidder should fail to execute the contract within ten (10) consecutive days from the date of notification of the awarding of the contract, the Owner, at his option, may determine that the awardee has abandoned the contract. The bidder's proposal shall then become null and void, and the bid bond or certified check which accompanied it shall be forfeited to and become the property of the Owner as liquidated damages for failure to execute the contract.

The bidder hereby agrees that failure to submit herein above all required information and/or prices can cause disqualification of this proposal.

Submitted by:

NAME OF CONTRACTOR: \_\_\_\_\_

AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

Signature

NAME (typed): \_\_\_\_\_

TITLE: \_\_\_\_\_

*NOTICE: A bid bond or certified check or cash must accompany this proposal.*

**This form shall not be modified.** Attach supplemental form of proposal information pages for project specific requirements as needed.

DATE: \_\_\_\_\_

(Name of Owner)

RE:

Gentlemen:

In the bid submitted by \_\_\_\_\_ for Bid Division No. \_\_\_\_\_ of the  
\_\_\_\_\_ Project, the undersigned is listed as the supplier for certain materials  
designated therein, at a cost of \$\_\_\_\_\_.

Base Bid: \$ \_\_\_\_\_  
Alternate # \_\_\_\_\_ \$ \_\_\_\_\_  
Alternate # \_\_\_\_\_ \$ \_\_\_\_\_  
Alternate # \_\_\_\_\_ \$ \_\_\_\_\_

This is to acknowledge and authorize that:

1. \_\_\_\_\_ was authorized to make the representation to the Owner that the undersigned  
will provide the materials designated in said bid, for the price stated therein; and
2. If \_\_\_\_\_ is awarded a contract for Bid Division No. \_\_\_\_\_ of such Project, the  
undersigned will enter into a Purchase Order with the Owner, on the standard Purchase Order included in the Information  
to Bidders, to supply such materials for the price stated, and will guarantee and warrant performance to provide that such  
materials fully comply with the contract documents relating thereto; and
3. This commitment, acknowledgement, and authorization cannot be revoked during the time allowed by you to accept the bid  
of \_\_\_\_\_ or during any extended time for acceptance agreed to by  
\_\_\_\_\_.

Sincerely,

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

\_\_\_\_\_  
Signature Title

State of \_\_\_\_\_ County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

\_\_\_\_\_ My Commission Expires \_\_\_\_\_

Reviewed for basic compliance with Contract Documents:

BY: (Construction Manager) \_\_\_\_\_  
BY: (Architect or Engineer) \_\_\_\_\_

**KENTUCKY DEPARTMENT OF EDUCATION**  
**DIVISION OF FACILITIES MANAGEMENT**

**PURCHASE ORDER**

702 KAR 4:160

MAY 1993

BOARD OF EDUCATION \_\_\_\_\_

KENTUCKY SALES TAX  
EXEMPTION NUMBER: \_\_\_\_\_

DATE OF ORDER: \_\_\_\_\_

VENDOR NAME: \_\_\_\_\_

VENDOR ADDRESS: \_\_\_\_\_

SHIP TO: \_\_\_\_\_

ATTENTION OF: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

**THIS PURCHASE ORDER NUMBER MUST APPEAR ON ALL  
PACKAGES, INVOICES AND SHIPPING PAPERS**

P.O. NUMBER: \_\_\_\_\_

BID DIVISION NUMBER: \_\_\_\_\_

CATEGORY: \_\_\_\_\_

SCHOOL: \_\_\_\_\_

PURCHASOR: \_\_\_\_\_

AUTHORIZED SIGNATURE:

\_\_\_\_\_  
(Approved by Central Office)

\_\_\_\_\_  
(Approved by Vendor)

DATE: \_\_\_\_\_

ALLOCATION CHARGED: \_\_\_\_\_

QUANTITY	CAT NUMBER	DESCRIPTION	UNIT PRICE	TOTAL
		Furnish the necessary materials to complete		
		the following bid division(s) in its entirety.		
		All materials to be in accordance with the		
		requirements of the Contract Documents		
		prepared by:		
		Bid Division(s):	L.S.	
		<b>SPECIMEN COPY ONLY</b>		
		C.M. must be notified 48 hours in advance of		
		delivery to jobsite.		

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, \_\_\_\_\_, being a duly authorized representative of  
(name)

\_\_\_\_\_ the manufacturer, and/or  
(company name)

distributor and/or sales representative of \_\_\_\_\_,  
(product name)

do hereby certify that the above named product complies in strict accordance with the Contract Documents for the

construction of \_\_\_\_\_ located in  
(project name)

\_\_\_\_\_, and that the product is  
compatible  
(project address)

and fit for the intended use and incorporation into this project.

Further, I understand that the Architect and Owner may rely on this certification.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Date)

Attached is supporting information.

KENTUCKY DEPARTMENT OF EDUCATION  
DIVISION OF FACILITIES MANAGEMENT

PURCHASE ORDER  
702 KAR 4:160  
May 1993

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# AIA® Document A201™ – 2007

## General Conditions of the Contract for Construction

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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### for the following PROJECT:

*(Name and location or address)*

<< >>

<< >>

### THE OWNER:

*(Name, legal status and address)*

<< >><< >>

<< >>

### THE ARCHITECT:

*(Name, legal status and address)*

<< >><< >>

<< >>

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4.2.11, 4.2.12

#### **Written Notice**

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7,  
9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, **13.3**,  
14, 15.4.1

#### **Written Orders**

1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2,  
14.3.1, 15.1.2

## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### **§ 1.1.2 THE CONTRACT**

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

#### **§ 1.1.3 THE WORK**

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

#### **§ 1.1.4 THE PROJECT**

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

#### **§ 1.1.5 THE DRAWINGS**

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

#### **§ 1.1.6 THE SPECIFICATIONS**

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

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

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

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

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**User Notes:**



**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **§ 1.3 CAPITALIZATION**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### **§ 1.4 INTERPRETATION**

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

### **§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**§ 1.5.1** The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

### **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

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

### **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.2.4** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

### **§ 3.4 LABOR AND MATERIALS**

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

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **§ 3.5 WARRANTY**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### **§ 3.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1)

whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**§ 3.10.2** The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

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

### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

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

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

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

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

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.



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

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

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

### **§ 3.13 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

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

### **§ 3.15 CLEANING UP**

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

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 ACCESS TO WORK**

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

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

**§ 4.1.1** The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 DEFINITIONS**

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

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

### **§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

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

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

### **§ 5.3 SUBCONTRACTUAL RELATIONS**

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

### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor’s rights and obligations under the subcontract.

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

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

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

### **§ 6.2 MUTUAL RESPONSIBILITY**

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

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

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

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

### **§ 6.3 OWNER'S RIGHT TO CLEAN UP**

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

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

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

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

### § 7.2 CHANGE ORDERS

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

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

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

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- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### **§ 7.4 MINOR CHANGES IN THE WORK**

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

### **ARTICLE 8 TIME**

#### **§ 8.1 DEFINITIONS**

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

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

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

#### **§ 8.2 PROGRESS AND COMPLETION**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

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

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

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

### **§ 9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

### **§ 9.4 CERTIFICATES FOR PAYMENT**

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

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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## § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

## § 9.6 PROGRESS PAYMENTS

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

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the

Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

#### **§ 9.7 FAILURE OF PAYMENT**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### **§ 9.8 SUBSTANTIAL COMPLETION**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

## **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

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

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

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

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

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

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

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

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

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



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

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

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### **§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

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

#### **§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**§ 10.3.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

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

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

## **§ 10.4 EMERGENCIES**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

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

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

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

**§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

**§ 11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or

omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

## **§ 11.2 OWNER'S LIABILITY INSURANCE**

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

## **§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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

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

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

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

## **§ 11.3.2 BOILER AND MACHINERY INSURANCE**

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

## **§ 11.3.3 LOSS OF USE INSURANCE**

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

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

**§ 11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall

waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.3.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### **§ 11.3.7 WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

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

**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 UNCOVERING OF WORK**

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

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

## **§ 12.2 CORRECTION OF WORK**

### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

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

### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

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

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

## **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

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

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### **§ 13.2 SUCCESSORS AND ASSIGNS**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall



assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### **§ 13.3 WRITTEN NOTICE**

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

### **§ 13.4 RIGHTS AND REMEDIES**

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

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

### **§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

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

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

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

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

### **§ 13.6 INTEREST**

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

### **§ 13.7 TIME LIMITS ON CLAIMS**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method

selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 TERMINATION BY THE CONTRACTOR**

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

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

### **§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

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

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

#### **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

#### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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

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

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 CLAIMS**

##### **§ 15.1.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

##### **§ 15.1.2 NOTICE OF CLAIMS**

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

##### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

##### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

##### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.



**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### **§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

### § 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

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

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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User Notes:

**KENTUCKY DEPARTMENT OF EDUCATION  
DIVISION OF FACILITIES MANAGEMENT  
AMENDMENT to  
GENERAL CONDITIONS OF THE CONTRACT  
FOR CONSTRUCTION  
AIA A201-2007**

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**ARTICLE 2 OWNER**

- 2.2.1 Delete the entire paragraph.

**ARTICLE 4 ARCHITECT**

**4.2 ADMINISTRATION OF THE CONTRACT**

- 4.2.1 Revise the first sentence of the paragraph to read: "...the final Certificate For Payment, and, at the discretion of the Owner and for Reimbursable Expenses, may be the Owner's representative during the one-year period for correction of Work described in Paragraph 12.2."

**ARTICLE 7 CHANGES IN THE WORK**

- 7.1.4 Add subparagraph 7.1.4, as follows: "Proposed Change in the Work exceeding \$7,500, additive or deductive, shall be subject to approval by the Division of Facilities Management, Kentucky Department of Education, prior to execution of the Change Order by the Owner."
- 7.3.7 Revise the paragraph to read "...in case of an increase in the Contract Sum, an amount for overhead and profit not to exceed fifteen percent (15%) of the net cost of the change. In such case..."

**ARTICLE 9 PAYMENTS AND COMPLETION**

**9.3 APPLICATIONS FOR PAYMENT**

- 9.3.1 Change "retainage if provided for in the Contract Documents" to "retainage as stipulated in Subparagraph 9.3.4."
- 9.3.4 Add Subparagraph 9.3.4 as follows: "The Owner shall retain ten percent (10%) from each Application for Payment up to fifty percent (50%) completion of the Work, then, provided the Work is on schedule and satisfactory, and upon written request of the Contractor together with consent of surety and the recommendation of the Architect, the Owner shall approve a reduction in retainage to five percent (5%) of the current Contract Sum. No part of the five percent (5%) retainage shall be paid until after Substantial Completion of the Work, as defined in Section 9.8.1. After Substantial Completion, if reasons for reduction of the retainage are certified in writing by the Architect and approved by the Owner, a reduction to a lump sum amount less than the five percent (5%) retainage may be approved by the Division when deemed reasonable. The minimum lump sum amount shall be twice the estimated cost to correct deficient or incomplete work."

**9.6 PROGRESS PAYMENTS**

- 9.6.1 Revise the paragraph to read "...within the time provided in the Contract Documents or as required by state law, whichever is more restrictive, and shall so notify the Architect."

**9.10 FINAL COMPLETION AND FINAL PAYMENT**

- 9.10.1 Add the following sentence to the end of the paragraph: "Upon receipt and approval of the final Certificate for Payment, the Architect, Contractor, and Owner shall complete their portion of the "Project Closeout Form" (BG-4, 2008), and the Owner shall forward it to the Kentucky Department of Education, Division of Facilities Management, with the Architect's notification that all items of the punch list have been completed, a copy of the final Certificate for Payment, and a copy of the board order authorizing the BG-4 form, accepting the Work and approving final payment to the Contractor."

## **ARTICLE 11 INSURANCE AND BONDS**

### **11.1 CONTRACTOR'S LIABILITY INSURANCE**

- 11.1.2 Add the following: "Such insurance shall be no less than the following amounts:

- |                      |  |
|----------------------|--|
| (1) Public Liability | \$200,000.00 one person/maximum each person<br>\$500,000.00 one accident/maximum each person |
| (2) Property Damage  | \$200,000.00 one accident/maximum<br>\$500,000.00 aggregate"                                 |

- 11.1.2.1 The Insurance required by Subparagraph 11.1.1 shall be written for not less than the following limits, or greater if required by law:

- (1) Worker's Compensation:

- |   |           |
|---|-----------|
| a. State                                    | Statutory |
| b. Applicable Federal (e.g. Longshoreman's) | Statutory |
| c. Employer's Liability                     | \$500,000 |

- (2) Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractor's Protection; Product Liability and Completed Operations; Broad Form Property Damage);

- |   |             |
|---|-------------|
| a. General Aggregate<br>(Except Products-Completed Operations)  | \$1,000,000 |
| b. Products-Completed Operations Aggregate  | \$1,000,000 |
| c. Personal/Advertising Injury<br>(per person/organization)   | \$1,000,000 |
| d. Each Occurrence<br>(Bodily Injury and Property Damage)   | \$1,000,000 |
| e. Limit per Person Medical Expense   | \$ 5,000    |
| f. Exclusions of Property in Contractors Care,<br>Custody or Control will be eliminated.                            |             |
| g. Property Damage Liability Insurance will provide<br>Coverage for Explosion, Collapse,<br>and Underground Damage. |             |

- (3) Contractual Liability:

- |   |             |
|---|-------------|
| a. General Aggregate                                      | \$1,000,000 |
| b. Each Occurrence<br>(Bodily Injury and Property Damage) | \$1,000,000 |

- (4) Automobile Liability:

- |                    |   |
|--------------------|---|
| a. Bodily Injury   | \$500,000 Each Person<br>\$1,000,000 Each Accident                        |
| b. Property Damage | \$500,000 Each Accident, or<br>a combined single limit of<br>\$1,000,000. |

(5) Liability coverage for the Owner, the Architect, the Architect's Consultants and others listed in the Supplementary Conditions will be provided (subject to customary exclusions for professional liability), by endorsement as additional insureds on the Contractor's Liability Policy.

(6) Excess Liability Umbrella Form:

a. General Aggregate	\$1,000,000
b. Each Occurrence	\$1,000,000

The owner shall be consulted with to determine if additional coverage limits are required to comply with their specific needs as dictated by their legal counsel and/or insurance carrier.

### **11.3 PROPERTY INSURANCE**

11.3.6 Revise the first sentence to read: "Before an exposure to loss may occur, the Owner shall file with the Contractor, the Architect, and the Division a copy of each policy that includes insurance coverages required by this Section 11.3."

### **11.4 PERFORMANCE BOND AND PAYMENT BOND**

11.4.1 Revise Paragraph 11.4.1 as follows: "Unless otherwise provided, when the Contract Sum exceeds twenty-five thousand dollars (\$25,000) the Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. A surety company authorized to do business in Kentucky shall execute bonds, and the cost thereof shall be included in the Contract Sum. Unless otherwise provided, the amount of each bond shall be equal to 100% of the Contract Sum, or 100% of the Lump Sum Base Bid plus or minus accepted Alternates, whichever is greater."

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **13.1 GOVERNING LAW**

13.1.1 Add Paragraph 13.1.1 as follows: "None of the Contract Documents for this project shall be construed against the party preparing documents on the grounds that the party prepared or drafted the document, or any portion thereof."

### **13.6 INTEREST**

Revise the sentence to read "...shall bear interest from the date payment is due at such rate required by state law, or in the absence of law, at the prevailing legal rate at the time and place where the Project is located."

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **15.3 MEDIATION**

15.3.2 Revise the first sentence to read: "The parties shall endeavor to resolve their Claims by mediation, which shall be in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association in effect on the date of the Agreement."

## **END OF AMENDMENT**

# AIA® Document A101™ – 2007

## Standard Form of Agreement between Owner and Contractor

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form.

An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Any singular reference to Contract, Surety, Owner or other party shall be considered plural where applicable.

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**AGREEMENT** made as of the « » day of « » in the year « »

*(In words, indicate day, month and year)*

**BETWEEN** the Owner:

*(Name, legal status, address and other information)*

« »  
« »  
« »  
« »

and the Contractor:

*(Name, legal status, address and other information)*

« »  
« »  
« »  
« »

for the following Project:

*(Name, location and detailed description)*

« »  
« »  
« »

The Architect:

*(Name, legal status, address and other information)*

« »  
« »  
« »  
« »

The Owner and Contractor agree as follows.

## TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS
10	INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

« »

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

« »

**§ 3.2** The Contract Time shall be measured from the date of commencement.

**§ 3.3** The Contractor shall achieve Substantial Completion of the entire Work not later than « » ( « » ) days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

« »

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

<< >>

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be << >> (\$ << >> ), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

<< >>

§ 4.3 Unit prices, if any:

*(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)*

Item

Units and Limitations

Price Per Unit (\$ 0.00)

§ 4.4 Allowances included in the Contract Sum, if any:

*(Identify allowance and state exclusions, if any, from the allowance price.)*

Item

Price

#### ARTICLE 5 PAYMENTS

##### § 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

<< >>

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the << >> day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the << >> day of the << >> month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than << >> ( << >> ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.



§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of « » ( « » ). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of « » ( « » );
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

« »

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

« »

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

« »

« »

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User Notes:

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<< >>

## § 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

☐ [ << >> ] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☐ [ << >> ] Litigation in a court of competent jurisdiction

☐ [ << >> ] Other *(Specify)*

<< >>

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

<< >> << >>

§ 8.3 The Owner's representative:

*(Name, address and other information)*

<< >>  
<< >>  
<< >>  
<< >>  
<< >>  
<< >>

§ 8.4 The Contractor's representative:

*(Name, address and other information)*

<< >>  
<< >>  
<< >>  
<< >>  
<< >>  
<< >>

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

<< >>

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 9.1.4 The Specifications:

*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

<< >>

Section	Title	Date	Pages

§ 9.1.5 The Drawings:

*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

<< >>

Number	Title	Date

§ 9.1.6 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- 1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

<< >>

- 2 Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

<< >>

## ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007. *(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*

Type of insurance or bond

Limit of liability or bond amount (\$ 0.00)

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

« »« »

(Printed name and title)

CONTRACTOR (Signature)

« »« »

(Printed name and title)

**KENTUCKY DEPARTMENT OF EDUCATION  
DIVISION OF FACILITIES MANAGEMENT  
AMENDMENT TO THE  
STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
AIA A101-2007**

---

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

- 3.3** Add the following: "Liquidated Damages: As actual damages for delay in completion of Work are impossible to determine, the Contractor and his Surety shall be liable for and shall pay to the Owner the sum of \$\_\_\_\_\_, not as a penalty, but as fixed, agreed and liquidated damages for each calendar day of delay until the Contract Work is substantially completed as defined in the General Conditions of the Contract for Construction.
- "The Owner shall have the right to deduct liquidated damages from money in hand otherwise due, or to become due, to the Contractor, or to sue and recover compensation for damages for failure to substantially complete the Work within the time stipulated herein. Said liquidated damages shall cease to accrue from the date of Substantial Completion."

**ARTICLE 5 PAYMENTS**

- 5.1.3** Add the following: "State law (KRS 371.405) requires the Owner to pay undisputed Applications for Payment within forty-five (45) business days following receipt of the invoices. If the Owner fails to pay the Contractor within forty-five (45) business days following receipt of an undisputed Application for Payment, state law requires the Owner shall pay interest to the Contractor beginning on the forty-sixth business day after receipt of the Application for Payment, computed at the rate required by state law.
- 5.1.8** Revise subparagraph to read: "The Owner shall retain ten percent (10%) from each Application for Payment up to fifty percent (50%) completion of the Work, then, provided the Work is on schedule and satisfactory, and upon written request of the Contractor together with consent of surety and the recommendation of the Architect, the Owner shall approve a reduction in retainage to five percent (5%) of the current Contract Sum. No part of the five percent (5%) retainage shall be paid until after Substantial Completion of the Work, as defined in the General Conditions of the Contract for Construction. After Substantial Completion, if reasons for reduction in retainage are certified in writing by the Architect, a reduction to a lump sum amount less than the five percent (5%) retainage may be approved by the Owner when deemed reasonable. The minimum lump sum retainage shall be twice the estimated cost to correct deficient or incomplete work."
- 5.2.1** Add condition 5.2.1.3, as follows: "The Contractor provides the Owner with affidavits that all payrolls, bills for materials, supplies and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied and with Consent of Surety for final payment."

- 5.2.2** Delete the entire paragraph.

**ARTICLE 6 DISPUTE RESOLUTION**

- 6.1** Delete the words: " , unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker."

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

- 8.2** Revise the sentence to read "...shall bear interest from the date payment is due at such rate required by state law, or in the absence of law, at the prevailing legal rate at the time and place where the Project is located."

**END OF AMENDMENT**

# AIA® Document A312™ – 1984

## Performance Bond

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« »« »  
« »

**SURETY** (*Name, Legal Status and Principal Place of Business*):

« »« »  
« »

**OWNER** (*Name, Legal Status and Address*):

« »« »  
« »

## CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description (*Name and Location*):

« »  
« »

## BOND

Date (*Not earlier than Construction Contract Date*): « »

Amount: \$ « »

Modifications to this Bond: « » None « » See Section 13

## CONTRACTOR AS PRINCIPAL

Company: (*Corporate Seal*)

Signature:

Name and Title: « »« »

## SURETY

Company: (*Corporate Seal*)

Signature:

Name and Title: « »« »

(*Any additional signatures appear on the last page*)  
(*FOR INFORMATION ONLY - Name, Address and Telephone*)

## AGENT or BROKER: OWNER'S REPRESENTATIVE

(*Architect, Engineer or other party*):

« »  
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§ 1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Section 3.1.

§ 3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

§ 3.1 The Owner has notified the Contractor and the Surety at its address described in Section 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

§ 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Section 3.1; and

§ 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

§ 4 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

§ 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

§ 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

§ 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

§ 5 If the Surety does not proceed as provided in Section 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Section 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be

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greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

**§ 6.1** The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

**§ 6.2** Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 4; and

**§ 6.3** Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

**§ 7** The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

**§ 8** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 9** Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**§ 10** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

**§ 11** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

## **§ 12 DEFINITIONS**

**§ 12.1** Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

**§ 12.2** Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

**§ 12.3** Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

**§ 12.4** Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

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**§ 13 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

« »

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: *(Corporate Seal)*

Company: *(Corporate Seal)*

Signature:

Signature:

Name and Title: « »« »

Name and Title: « »« »

Address: « »

Address: « »

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## Payment Bond

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« »« »  
« »

**SURETY** (*Name, Legal Status and Principal Place of Business*):

« »« »  
« »

**OWNER** (*Name, Legal Status and Address*):

« »« »  
« »

## CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description (*Name and Location*):

« »  
« »

## BOND

Date (*Not earlier than Construction Contract Date*): « »

Amount: \$ « »

Modifications to this Bond: « » None « » See Section 16

## CONTRACTOR AS PRINCIPAL

Company: (*Corporate Seal*)

## SURETY

Company: (*Corporate Seal*)

Signature:

Name and Title: « »« »

Signature:

Name and Title: « »« »

(*Any additional signatures appear on the last page*)

(*FOR INFORMATION ONLY - Name, Address and Telephone*)

**AGENT or BROKER:**

« »  
« »  
« »

**OWNER'S REPRESENTATIVE**

(*Architect, Engineer or other party*):

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« »

§ 1 The Contractor and the Surety, jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 With respect to the Owner, this obligation shall be null and void if the Contractor:

§ 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

§ 2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Section 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

§ 3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

§ 4 The Surety shall have no obligation to Claimants under this Bond until:

§ 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

§ 4.2 Claimants who do not have a direct contract with the Contractor:

- .1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
- .2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
- .3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

§ 5 If a notice required by Section 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

§ 6 When the Claimant has satisfied the conditions of Section 4, the Surety shall promptly and at the Surety's expense take the following actions:

§ 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

§ 6.2 Pay or arrange for payment of any undisputed amounts.

§ 7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

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**§ 8** Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond.

By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

**§ 9** The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

**§ 10** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 11** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Section 4.1 or Section 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**§ 12** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

**§ 13** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**§ 14** Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

## **§ 15 DEFINITIONS**

**§ 15.1** Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

**§ 15.2** Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

**§ 15.3** Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

## **§ 16 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

<< >>

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User Notes:

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: *(Corporate Seal)*

Signature:

Name and Title: « »« »

Address: « »

**SURETY**

Company: *(Corporate Seal)*

Signature:

Name and Title: « »« »

Address: « »

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User Notes:

**KENTUCKY DEPARTMENT OF EDUCATION  
DIVISION OF FACILITIES MANAGEMENT  
AMENDMENT TO  
PERFORMANCE BOND/PAYMENT BOND |  
AIA A312-1984**

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Add to each document under this heading:

**Modifications to these bonds are as follows:**

1. Surety Company shall be licensed to conduct business in the Commonwealth of Kentucky and listed in and written within the terms and limits established by 58 Federal Register, p. 35778,1993.
2. Insurance Agency and Agents issuing bond shall be registered and licensed to conduct business in the Commonwealth of Kentucky with the appropriate Power of Attorney included.
3. Bond shall comply with all statutory requirements of the Commonwealth of Kentucky including the Kentucky Unemployment Insurance Law. Preferred vendors shall include the cost of performance and payment bond on all prices (and contracts) that are \$25,000 and above in accordance with the Kentucky Revised Statutes.
4. No suit, action or proceeding by reason or any default whatever shall be brought on this bond after two (2) years from the date on which final payment of the contract fall due and provided further that if any alterations or additions which may be made under the contract or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the contract or any other forbearance on the part of either the Owner or the Principal shall not, in any way, release the Principal and Surety, or either of them, their heirs, executors, administrators, successors, or assigns for their liability hereunder. Notice to the Surety of any such alterations, extensions, or forbearance being expressly waived.

This obligation shall remain in force and effect until the performance of all covenants, terms and conditions herein stipulated and after such performance, it shall become null and void.

## SECTION 075700 - COATED FOAMED ROOFING

### PART 1 - GENERAL

#### 1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

#### 1.2 SUMMARY

- A. Extent of sprayed insulating roofing systems work is indicated on drawings and by requirements of this section. Extent of work includes but is not limited to Spray-applied, polyurethane foam insulation.
- B. Related Sections: Materials and labor for the following related sections shall be furnished and installed in accordance with requirements in the "Unit Pricing for Construction of Foam Roofs" in the Instructions to Bidders (pp 27-47) and:
  - 1. Division 06 Section "Miscellaneous Rough Carpentry" for wood blocking, and nailers.
  - 2. Division 07 Section "Sheet Metal Flashing and Trim" for foam stops, roof penetration flashings, and counter flashings.
  - 3. Division 07 Section "Joint Sealants" for joint sealants, joint fillers, and joint preparation.

#### 1.3 PERFORMANCE REQUIREMENTS

- A. Watertightness: Provide coated foamed roofing that is watertight and will not permit the passage of water.
- B. Material Compatibility: Provide polyurethane foam, elastomeric coatings, and miscellaneous roofing materials that are compatible with one another and able to bond to substrate under conditions of service and application required, as demonstrated by coated foamed roofing manufacturer based on testing and field experience.
- C. Roofing System Design: Provide a coated foamed roofing system that is identical to systems that have been successfully tested by a qualified testing and inspecting agency to resist uplift pressure calculated according to SEI/ASCE 7. (Per I-90 Wind Up-lift Requirements)

#### 1.4 SUBMITTALS

- A. First three paragraphs below are defined in Division 01 Section "Submittal Procedures" as "Action Submittals."
- B. Product Data: For each type of product indicated. Include manufacturer's written instructions for evaluating, preparing, and treating substrate; technical data; and tested physical and performance properties.
- C. Samples for Initial Selection: For roof coating colors.

- D. Samples for Verification: For coated foamed roofing, prepared on Samples of size indicated below:
  - 1. Samples, 24 by 24 inches, on rigid backing, showing polyurethane foam of thickness required and stepped coatings in colors required to illustrate buildup of coated foamed roofing.
- E. Qualification Data: For SPFA-qualified Installer and applicators.
- F. Product Test Reports: Based on evaluation of comprehensive tests performed by a qualified testing agency, for coated foamed roofing.
- G. Field quality-control reports.
- H. Maintenance Data: For coated foamed roofing to include in maintenance manuals.
- I. Warranty: Sample of special warranty.

#### 1.5 QUALITY ASSURANCE

- A. Manufacturer: Company specializing in manufacturing product systems specified in this Section with a minimum twenty (20) years experience. Manufacturer's to have at least a Dun & Bradstreet rating of 5A, as well as minimum net worth of 200 million dollars.
- B. Installer: Firm specializing in performing work of this section with a minimum of twenty (20) years experience with a minimum of (20) million square feet successfully installed silicone coated polyurethane foam roofing. Installer must be an approved applicator by Manufacturer providing the warranty for a minimum of (10) years, and is capable of receiving specified (20) year NDL roof warranty.
  - 1. Installing Contractor to provide proof that they have a current customer satisfaction rating of 9.8 or greater with the Arizona State - Performance Based Study Group as well as a proven performance track record for the last (10) years, prior to submitting their bid on this project.
  - 2. Applicator to provide proof that they are currently fully accredited by the SPFA (Spray Polyurethane Foam Alliance) for minimum of at least (10) years, prior to submitting their bid on this project.
  - 3. Applicator to provide proof that they are have been located and have maintained an office within 275 miles of the jobsite for at least the last ten years, prior to submitting their bid on this project.
  - 4. Applicator to provide 100% payment & performance bond to General Contractor for this portion of their contract... if applicable.
  - 5. Applicator to provide a list of at least (5) jobs similar in size, dollar amount and scope, which have been completed within the last (3) years prior to submitting their bid on this project.
  - 6. Applicator to carry a minimum (8) million dollar insurance umbrella for their portion of this project.



7. Applicator to ensure all supervising personal onsite has 30 hour O.S.H.A cards.

## 1.6 INDEPENDENT ROOF INSPECTION SERVICES

### 1. SCOPE:

- a. The Contractor is to provide and facilitate complete services for third party quality control roof inspections for all new roofing installations.
- b. Services must be as follows:
  1. Review and approval of roofer's qualifications.
  2. Review and approval of roof shop drawings and action plan.
  3. Attendance and documentation of pre-roofing conference inspections, directions and conclusions. Documentation shall include electronic photographs of all deficiencies.
  4. Attendance and documentation of min. 18 periodic roofing progress review meeting/inspections, including all follow-up directions, and conclusions. Contractor shall be responsible for all required follow-up return inspections including post project review visits to address failures, including scheduling and any additional inspection costs.
  5. Attendance and documentation of post-roofing inspection to include notice of any deficiencies with electronic photographs.

### 2. INDEPENDENT ROOF INSPECTOR'S QUALIFICATIONS

- a. Roof inspector must be independent and not affiliated nor aligned with any roof mfr. roof distributor, or contractor.
  - b. Roof inspector shall have been in business a min. of 10 years and have min. 5 years experience in inspections of projects of similar size and roof system(s).
  - c. Roof inspector must at a min., have 75% of work per year providing inspection services.
  - d. Roof inspector must be RCI certified and RRC accredited or member in good standing with NRCA.
  - e. Roof inspector shall carry professional liability insurance, with the following minimum amount of \$500,000.00 per claim and \$1,000,000.00 aggregate per annum.
  - f. Roofing contractor shall submit roof inspector's qualifications and confirmation of familiarity and experience with specified/provided roof type and manufacturer.
  - g. Roofing contractor shall submit qualifications and references of roof inspector indicating compliance with the above requirements.
3. The roofing contractor is to facilitate and coordinate third party roof inspections with the Construction Manager/General Contractor, Owner and Architect with notice given of meetings or inspections at least one week in advance.
  4. The roofing contractor is to photo document each day's work including general views and detail photographic views of the progress and electronically transmit to third party on

a daily basis. Contractor to provide additional photos or documentation as requested by third party inspectors. Third party inspectors to review photos daily and document observations, concerns, and necessary corrections to the roofing contractor, general contractor and Architect within 24 hours.

5. Repetitive faulty work performed by the roofing contractor may require additional on site visits by third party inspectors. All inspector fees/costs due to additional inspections are the responsibility of the contractor. Additional inspections may be required by the architect upon the receipt of two notices of concern provided by the third party inspector.
6. Contractor to cooperate and coordinate with a representative of the Roof Manufacturer to attend the pre-roofing conference and post roofing inspection.
7. The roofing contractor shall be responsible for coordination, review and confirmation that all corrective work is performed per roof covering manufacturer standards, for compliance with warranty requirements
8. Warranty commences upon substantial completion provided that all deficiencies noted by manufacturer's representatives, third party inspector, and Architect are completed. If deficiencies have not been corrected by the date of substantial completion the warranty will begin upon the date the deficiency repairs are completed and have been accepted

#### 1.7 REGULATORY REQUIREMENTS

- A. Conform to applicable code for fire resistance ratings of roof assembly.

#### 1.8 PRE-INSTALLATION CONFERENCE

- A. Conduct conference at Project site minimum one week prior to beginning Work of this Section. Comply with requirements in Division 1 Section "Preconstruction Conferences."
- B. Review installation procedures and coordination required with related work, including manufacturer's WRITTEN INSTRUCTIONS.

#### 1.9 DELIVERY, STORAGE, AND HANDLING

- A. Deliver and store liquid materials and other products in their original unopened containers or packaging until ready for installation.
- B. Materials shall be clearly labeled with the manufacturer's name, product identification, safety information, and batch or lot numbers where appropriate.
- C. Store materials out of the weather and out of direct sunlight in locations where the temperatures are within limits specified by manufacturer.
- D. Protect stored products from ambient temperatures below 75 degrees F.
- E. Comply with the manufacturer's instructions and SPFA for handling and safety procedures.
- F. Store and dispose of solvent-based materials, and materials used with solvent-based materials, in accordance with requirements of local authorities having jurisdiction.

#### 1.10 ENVIRONMENTAL REQUIREMENTS

- A. Maintain environmental conditions (temperature, humidity, and ventilation) within limits recommended by manufacturer for optimum results. Do not install products under environmental conditions outside manufacturer's limits.
- B. Weather Limitations: Proceed with installation only when existing and forecasted weather conditions permit roofing system to be installed according to manufacturer's written instructions and warranty requirements.
- C. Do not install foam insulation under the following conditions:
  - 1) When ambient temperature is below 55 degrees F or above 110 degrees F.
  - 2) When relative humidity is above 95 percent.
  - 3) When wind velocity is above 10 mph, unless wind screens are utilized.
    - a) Installer to have onsite a windscreen to be used when needed.
  - 4) When raining.
  - 5) At temperature less than 5 degrees F above dew point.
- D. Do not install protective silicone overcoat under the following conditions:
  - 1) When ambient temperature is below 40 degrees F.
  - 2) When wind velocity is above 10 mph, unless wind screens are utilized.
  - 3) Installer to have onsite a windscreen to be used when needed.
  - 4) When raining.
  - 5) At temperature less than 5 degrees F above dew point.

#### 1.11 WARRANTY

- A. MANUFACTURES ROOF WARRANTY: Submit a written no-dollar limit, non-pro-rated, 20 year full system warranty covering all materials & labor executed by the 5A rated Manufacturer.
  - 1. (Refer to additional requirements in Independent Roof Inspection Services)
- B. Special Roof Installer's Warranty: Submit roofing Installer's warranty, on warranty form at end of this Section, signed by Installer, covering Work of this Section, including all components of polyurethane foam roof system as designed.
  - 1. Warranty Period: Two years from date of Substantial Completion.  
(Refer to additional requirements in Independent Roof Inspection Services)

## 2 PRODUCTS

### 2.1 Coated Foamed Roofing – Acceptable Manufacturers

A. BASF

B. BAYER

### 2.2 SUBSTRATE BOARD

A. N/A.

### 2.3 ROOF BOARD INSULATION

A. Polyisocyanurate: ASTM C1289, Type II, felt or glass-fiber mat on both major surfaces; minimum 20 psi compressive strength. R-value of polyisocyanurate insulation shall be based on LTTR 6 per inch of thickness. Thickness to be 1.5” – see details for total required thickness.

B. Insulation Overlay Board: 1/2 inch thick wood fiber board (recovery board) as manufactured by Celotex or as approved by coated foamed roofing manufacturer to maintain specified warranty.

### 2.4 FOAM INSULATION MATERIALS

A. Foam Insulation: Two component, closed-cell, rigid-class urethane foam, sprayed-in-place, with the following properties:

- 1) Density: ASTM D1622; 2.7 to 3.2 pounds per cubic foot.
- 2) Compressive Strength: ASTM D1621; 40 psi.
- 3) Tensile Strength: ASTM D1623, 80 psi.
- 4) Closed Cell Content: ASTM D2856, 90 percent, minimum.
- 5) Dimensional Stability: ASTM D2126, plus 8 percent maximum volume change at 28 days, 158 degrees F, 100 percent relative humidity.
- 6) Thermal Conductivity: ASTM C518, K factor of 0.15, aged.
- 7) Surface Burning Characteristics: ASTM E84, 75 maximum.
- 8) Smoke Developed Index: ASTM E84, 450 Maximum.

B. Substrate Primer: As required by roofing system manufacturer.

### 2.5 SILICONE MATERIALS

A. Overcoat: Silicone base and top coats with granulated surface complying with the following:

- 1) Tensile Strength: ASTM D412, 450.
- 2) Elongation: ASTM D412, 150 percent minimum at break at 75 degrees F.
- 3) Water Vapor Permeance: ASTM E398, 2.9 at 20 mils.

- 4) Fire resistance: ASTM E108, UL 790 Class A.
- 5) Color: Light Gray or Tan... Owner to select topcoat color.
- 6) Granulated surface: For cover coat complying with manufacturer's requirements.

## 2.6 ACCESSORIES

- A. Cant: Spray applied foam insulation, filleted to interruptions and penetrations through the roof surface.
- B. Sealant: Type recommended by the roofing system manufacturer.
- C. Fasteners: Mechanical fasteners with plates as approved by roofing system manufacturer and in compliance with FM 4450 per I-90 wind uplift requirements.
- D. Walkway Pads: Provide yellow spaghetti, breathable type mesh pads where indicated on Drawings.

## 3 EXECUTION

### 3.1 EXAMINATION

- A. Verify deck surface is smooth and dry and deck joints do not exceed 1/16 inch. Verify deck slope prior to beginning installation.
- B. Verify that roof openings and penetrations are in place and set and braced and that roof drains are securely clamped in place.
- C. Verify that concrete substrate is cured with moisture content not exceeding 12 percent. (if applicable)
- D. Verify that metal deck has no gaps and laps are closed.
- E. Proceed with installation only after unsatisfactory conditions have been corrected.

### 3.2 PREPARATION – GENERAL

- A. Clean surfaces thoroughly prior to installation.
- B. Prepare surfaces using methods recommended by manufacturer for achieving the best result for the substrate under project conditions indicated.
- C. Roof Board Insulation: Prevent materials from getting wet.
- D. Schedule work after penetrations through roof are complete and perimeter conditions are ready to receive roof system.
- E. Comply with SPFA applicable guidelines.
- F. Prevent materials from entering and clogging roof drains and from migrating onto surfaces of other construction. Remove roof-drain plugs when no work is taking place or when rain is forecast.
- G. Mask off adjacent surfaces that are not scheduled to receive foam.

### 3.3 PREPARATION - METAL DECK

- A. Install insulation with fasteners recommended by roofing system manufacturer to achieve wind uplift requirements specified for roofing system.
  - 1) Butt insulation ends firmly together along all edges without gaps or openings.
  - 2) Protect cover board from getting wet after installation and prior to being protected by foam cover board that has been exposed to moisture must be replaced.
  - 3) Remove loose dirt and debris by using compressed air, vacuum or light brooming.
  - 4) Protect installed cover board from spills of contaminants such as oil, grease, solvents, etc. Replace cover board that has been exposed to such contaminants.
  - 5) Remove materials or substances that will interfere with total adhesion of foam insulation to substrate.
  - 6) Mask off adjacent surfaces that are not scheduled to receive foam.

### 3.4 SUBSTRATE BOARD INSTALLATION

- 1. N/A.

### 3.5 ROOF BOARD INSULATION INSTALLATION

- A. Coordinate installation of roof board insulation components so insulation is not exposed to precipitation or left exposed at the end of the work day.
- B. Install insulation to conform to slopes indicated. (See details)
- C. Install insulation with long joints of insulation in a continuous straight line with end joints staggered between rows, abutting edges and ends between boards. Fill gaps exceeding 1/4 inch with insulation.
  - 1) Cut and fit insulation within 1/4 inch of nailers, projections, and penetrations.
- D. Mechanically Fastened Insulation: Install all layers of insulation and secure to deck using mechanical fasteners specifically designed and sized for fastening specified board-type roof insulation to deck type.
  - 1) Fasten insulation according to requirements in FMG's "Approval Guide" for specified Windstorm Resistance Classification.
  - 2) Fasten insulation to resist uplift pressure at corners, perimeter, and field of roof.
- E. Install overlay board over insulation with long joints in continuous straight lines with end joints staggered between rows. Loosely butt cover boards together and fasten to roof deck.
  - 1) Fasten cover boards according to requirements in FMG's "Approval Guide" for specified Windstorm Resistance Classification.
  - 2) Fasten cover boards to resist uplift pressure at corners, perimeter, and field of roof.

### 3.6 FOAM INSULATION INSTALLATION

- A. Apply primer and foam insulation in accordance with manufacturer's written installation instructions.
- B. Install foam insulation in multiple layers with minimum pass thickness of 1/2 inch.
  - 1) Thickness: a minimum of 1 1/2 inches unless otherwise indicated on Drawings.
  - 2) Provide positive slope for drainage. (See details for tapered insulation board)
- C. Extend foam 2 inches up vertical intersections, fillet insulation, and feather out.
  - 1) Form a cant of foam at perpendicular interruptions.
- D. Apply foam to permit first coat of overcoat within 24 - 36 hours. If this time limit is exceeded, prepare foam skin surface in accordance with manufacturer's written instructions.
- E. Develop finish skin surface to smooth and unbroken "orange peel" texture.
  - 1) Uneven surfaces, "tree bark" or "popcorn" textures are not acceptable.

### 3.7 FLASHINGS AND ACCESSORIES

- A. Coordinate installation of related flashings.
- B. Seal flashings and flanges of items penetrating roofing system.
- C. Install flexible walkway pads in locations indicated on Drawings. Adhere walkway products to substrate with compatible adhesive recommended by roofing system manufacturer.

### 3.8 SILICONE COATING INSTALLATION

- A. Install coating in accordance with manufacturer's instructions.
- B. Prepare and seal penetration through roof with sealant.
- C. Apply silicone coating in two coats with dissimilar colors for each coat to a total dry mil thickness of 25 mils minimum.
- D. Extend overcoat to cover foam insulation and extend 2 inches above foam termination on protrusions to a self terminating, water seal.
- E. Install granules in top coat at rate recommended by manufacturer.

### 3.9 FIELD QUALITY CONTROL

- A. Owner will engage the services of an independent party to periodically inspect roofing installation. Roofing system installer shall cooperate with personnel performing inspections. (If applicable)
- B. Final Roof Inspection: Arrange for roofing system manufacturer's technical personnel to inspect roofing installation on completion and submit report to Architect.
  - 1) Notify Architect and Owner 48 hours in advance of date and time of inspection.

- C. Repair or remove and replace components of roofing system where inspection results indicate that they do not comply with specified requirements.

### 3.10 CLEANING

- A. Clean work under provisions of Division 1. Remove overspray from adjacent surfaces using cleaning agents and procedures recommended by manufacturer of affected construction.
- B. Remove excess insulation or overcoat from finished surfaces.
- C. In areas where finished surfaces are soiled by work of this section, consult manufacturer of surfaces for cleaning advice and conform to their instructions.
- D. Repair or replace defaced or disfigured finishes caused by work of this section.

### 3.11 PROTECTION OF FINISHED WORK

- A. Protect finished work under provisions of Division 1.
- B. Ensure roof surface is free of traffic for minimum two (2) days after overcoat application.

## ROOFING INSTALLER'S WARRANTY

A. WHEREAS <Insert name> of <Insert address>, herein called the "Roofing Installer," has performed roofing and associated work ("work") on the following project:

1. Owner: <Insert name of Owner.>
2. Address: <Insert address.>
3. Building Name/Type: <Insert information.>
4. Address: <Insert address.>
5. Area of Work: <Insert information.>
6. Acceptance Date: <Insert date.>
7. Warranty Period: <Insert time.>
8. Expiration Date: <Insert date.>

END OF SECTION 075700