

**Project Manual:**

**Cunningham Library  
Basement Study Room Remodel  
510 North 6½ Walk  
Terre Haute, Indiana 47809**

**Architect/Project Manager:**



**Indiana State  
University**

**Department of Facilities Management  
951 Sycamore Street  
Terre Haute, Indiana 47809  
812-237-8100**

**MEP Engineer/Designer:**



**R.E. Dimond**  
and Associates, Inc.  
Consulting Engineers  
732 North Capitol Avenue  
Indianapolis, IN 46204

PHONE: (317) 634-4672 FAX: (317) 638-8725

**Bid Number B0026303**



## Bid Request

Bid # B0026303**BID REQUEST NOTICE TO BIDDERS**

Sealed proposals are requested for the Cunningham Library Basement Study Room Remodel, Bid Number B0026303. Proposals will be received for the above contract at the Office of the Department of Purchasing, Indiana State University, Facilities Management and Purchasing Building, 951 Sycamore Street, Terre Haute, Indiana 47809, until 2:00pm Local Time, August 28, 2018 and then will be opened and read aloud.

Bidding Documents may be downloaded from the ISU Plan Room at <http://www.indstateplanroom.com/> on **August 9, 2018** at no cost. Bidders must register for a free account the first time they access the website. Bid Documents on CD's may be ordered for purchase from Rapid Reproductions, Inc, 129 South 11<sup>th</sup> Street Terre Haute, IN 47807 (812-238-1681 Toll Free 800-736-7084) at a cost of \$7.50 per CD.

Proposals are to be made on the Bid Form published in the Bid Request. As a mandatory requirement the Proposal shall be accompanied by a certified check; cashier's check or a Bid Bond (AIA A310) for an amount not less than 5% of the total bid price for Base Bid(s) and all add Alternates.

Bidder(s) receiving awards shall be required to provide acceptable surety in the form of a Performance and Labor and Materials Payment Bond for the full amount of the award. Include the cost of all bonds and insurance in the bid amount.

Indiana State University is a Tax Exempt Institution and Indiana Sales Tax for products permanently incorporated in work shall not be included as part of the Bid or on any Application for Payment.

All Bidders must comply with All State and Federal Non-Discrimination laws.

Responsive bidders may not have an active dispute, claim, or litigation with Indiana State University.

Indiana State University reserves the right to accept or reject any Bid and to waive any irregularities in Bidding. Any proposal received after the time fixed herein shall be returned unopened.

No Bid may be withdrawn after the opening of Bids without the consent of Indiana State University for a period of One Hundred Twenty (120) days after the time of opening Bids.

A Pre-bid conference has been scheduled for 10:00am, Local Time, August 14, 2018, in the Cunningham Library Room 028, 510 N 6½ Walk, Terre Haute, Indiana 47809. *Representatives of each of the Bidders are strongly urged to attend.*

Contract Award shall be to a Single Prime Bidder for all single Base Bid project work or the Contract Award may be to multiple Single Prime Bidders for multiple Bid Package project work. The prime Bidder(s) shall be an experienced and qualified Contractor(s) having successfully completed a minimum of three (3) projects of similar size and scope. The Bid form for this Project requires the Bidder to submit evidence of successful installation of similar projects (minimum of three projects), including customer information, scope, dates, Contract dollar amounts. With their Bid or by the next business day following the Bid the Bidder shall submit their most current audited financial statement and vendor trade credit references as evidence of financial capability to perform the work.

**All questions relating to this Project shall be addressed to:**

**Scott Tillman, ISU Department of Facilities Management**  
**Phone 812-237-8198 E-mail [scott.tillman@indstate.edu](mailto:scott.tillman@indstate.edu)**

INDIANA STATE UNIVERSITY BOARD OF TRUSTEES

By: Diann E. McKee  
Senior Vice President for Finance and Administration and University Treasurer  
Indiana State University

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Bid Request

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**FORMS FOR BIDDING**

Submit pages 3-10 of this form, Section 001020 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Section 001045 Bidders Certification of Authorized Employment, a certified check; cashier's check or a Bid Bond and your most current audited financial statement with your Bid.

Submit Section 001040 Diversity Participation List for Prime and Subcontractors by noon on the next business day following the Bid Opening.

**BID SUBMITTED BY:**

Your Company's Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Company Contact Name: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email Address: \_\_\_\_\_

Signed: \_\_\_\_\_ Title \_\_\_\_\_ Date: \_\_\_\_\_

The Bidder's signature certifies the Bidder is in compliance with all aspects of the Bid Documents

**ADDENDA**

The following Addenda have been received. The modifications to the bidding documents noted therein have been considered and all costs thereto are included in the Bid Sum(s).

Addendum # _____	Dated _____
Addendum # _____	Dated _____
Addendum # _____	Dated _____
Addendum # _____	Dated _____

**OFFER**

Pursuant to and in compliance with Bid Request Form', and other Bidding Documents prepared by the ISU Facilities Management Department or their authorized Agent for the above mentioned project, the undersigned, having become thoroughly familiar with the terms and conditions of the proposed Contract Documents and with local conditions affecting the performance and costs of the Work at the place where the Work is to be completed, and having fully inspected the site in all particulars, hereby proposes and agrees to fully perform the Work within the time stated and in strict accordance with the intent of the proposed Contract Documents, including furnishing bonds, insurance, labor, materials, and to do all the Work required to construct and complete in accordance with the proposed Contract Documents as follows:

BASE BID: Remodel of Basement Study Rooms at Cunningham Library per Specifications and Drawings

\_\_\_\_\_ Dollars (\$) \_\_\_\_\_  
(State Amount in Words)

ALTERNATE BID(S)

1. Alternate No. 1: Replacement of selective carpeting on Lower Level with vinyl plank flooring.

\_\_\_\_\_ Dollars (\$) \_\_\_\_\_  
(State Amount in Words) Add  Deduct

**Bid Request****Bid # B0026303**

Indiana State University is a Tax Exempt Institution and Indiana Sales Tax for products permanently incorporated in work shall not be included as part of the Bid. All other applicable Federal, State and Local taxes shall be included in the Bid sum.

**ALLOWANCE(S)**

1. A \$5,000.00 Allowance shall be included in the Base Bid for Unforeseen Conditions and General Construction Contingency. It is solely at the discretion of the Architect/Engineer/Owner what costs may be applied to this Allowance.

**UNIT PRICE(S)**

No Unit Prices Requested

**ACCEPTANCE**

This offer shall be opened to acceptance and is irrevocable for the period as follows:

- Base Bid and All Alternates - One Hundred Twenty (120) calendar days from the Bid opening date.

If the Owner accepts the Bid within the time period stated above, Bidder will:

- Furnish the required bonds and insurance certificates within ten (10) calendar days of receipt of the Award Letter
- Commence work within seven (7) calendar days of receipt of the Award Letter or as Directed by the Owner.
- Execute the Contract for Construction Between Indiana State University and Contractor within seven (7) calendar days of receipt of the Contract.

The Bidder agrees to coordinate and expedite their work and that if the Award is given within fourteen (14) calendar days from the Bid opening date the work shall be substantially completed as listed herein. If the Award is not made within the stated fourteen (14) calendar days then the substantial completion date may be adjusted as allowed by the Contract Documents or as mutually agreed upon in writing by the Owner and Contractor.

**NON-COLLUSION AFFIDAVIT**

The Bidder, by its officers and agents or representatives present at the time of filing this bid, being duly sworn, say on their oaths that neither they nor any of them have in any way, directly or indirectly, entered into any arrangement or agreement with any other bidder, or with any public office of the State of Indiana, of any county or municipality or other public offices whereby such affiance or either of them, has paid or is to pay to such other bidder or public officer any sum of money, or has given or is to give to such other bidders or public officer anything of value whatever, or such affiance or either of them has not, directly or indirectly entered into any arrangement or agreement with any other bidder or bidders, which tends to or does lessen or destroy free competition in letting of the contract sought for by the attached bids; that no inducement of any form or character other than which appears upon the face of the bid will be suggested, offered, paid, or delivered to any person whomsoever to influence the acceptance of the said bid or awarding of the contract, nor has this bidder any agreement or understanding of any kind whatsoever, with any person whomsoever to pay, deliver to, or share with any other person in any way or manner, any of the proceeds of the contract sought by this bid.

**NON-DISCRIMINATION**

The Bidder and its Subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to their hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of their sex, race, natural origin, ancestry or religion or disability as prohibited under the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of the Contract.

Bid Request

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MBE/WBE/VBE BIDDING:

See Section 001030 for requirements for MBE/WBE/VBE Compliance. Section 001040 must be completed by the Apparent Low Bidder(s) or any MBE/WBE/VBE Bidder(s) and submitted by 12:00 noon local time on the next working day following the Bid opening to the ISU Purchasing Department. Fax to (812)-237-3599

Yes  No  Is the Bidder (Prime Contractor) or any Subcontractor MBE, WBE or VBE Compliant?

**EXPERIENCE QUESTIONNAIRE**

List similar projects completed by your organization:

1. Contract Amount \_\_\_\_\_  
 Description \_\_\_\_\_  
 Date Completed \_\_\_\_\_  
 Owner \_\_\_\_\_  
 (Name and phone #)

2. Contract Amount \_\_\_\_\_  
 Description \_\_\_\_\_  
 Date Completed \_\_\_\_\_  
 Owner \_\_\_\_\_  
 (Name and phone #)

Yes  No  Has your organization ever failed to complete any work awarded it?

If yes, where and why?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Yes  No  Does your Organization have any pending litigation or litigation completed within the past five (5) years initiated by your Organization or the Owner as a result of your work on another Project?

If yes, attach a complete listing, with your Quote, of all such litigation(s) and name(s) of Institutions and/or Parties involved with complete contact information. Failure to submit information may result in disqualification of your Quote.

Bid Request

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Yes  No  Has your Organization been cited for violation of State or Federal regulations within the past twelve months?

If yes, what was the violation and resolution?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

List references from firms for which your organization has performed work. Provide firm name, contact person name and phone number.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**INSTRUCTIONS TO BIDDERS**

1. GENERAL

- A. Respondents shall carefully read the Bid Request with regard to preparation of proposals, which includes the forms required to be submitted.
- B. Bid Bond
  - 1) As a mandatory requirement the Bid shall be accompanied by a certified check; cashier's check or an acceptable Bid Bond (AIA A310) for an amount not less than 5% of the total Bid price for the Base Bid(s) and all add Alternates.
  - 2) The Bid bond shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. The Bid Bond shall be obtained from surety or insurance company that is duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. In addition to appearing on Circular 570 U.S. Dept. of the Treasury, such Surety or insurance company shall maintain an A.M. Best's Rating of not less than "A."
- C. All Bidders shall fully inform themselves of the conditions under which the work is to be performed, the site of the work, the obstacles that may be encountered, and other relevant matters concerning the work to be performed.
- D. The Contractor shall begin Work within seven (7) after Award and shall be substantially completed by October 19, 2018. Final closeout shall be within thirty (30) calendar days thereafter.
- E. No Bidder, after being awarded the contract, shall be allowed any extra compensation for reason of their failure to fully inform themselves, prior to their Bidding, of all requirements of the Contract Documents, the Drawings, and Specifications.



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- F. If any Bidder for the proposed contract is in doubt as to the true meaning of any part of the Drawings, Specifications or their proposed Contract Documents, they may submit to the Owner written request for any interpretation thereof. The Bidder submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by an Addendum. Such Addendum, if any, issued before submission of the Quotes, shall be taken into account and included in the Proposal.
- G. Any Bidder may withdraw their Bid at any time prior to the scheduled time for the receipt of Bids.
- H. No Bidder may withdraw their Bid for a period of One Hundred Twenty (120) calendar days after date and time set for receipt of the Bids.
- I. The Owner reserves the right to accept or reject any bid and to waive any irregularities in bidding.

**2. EXECUTION OF AGREEMENT**

- A. For all Projects the forms of agreement which the successful Bidder, as Contractor, will enter into will be an ISU Award Letter, an ISU Purchase Order and for any Project in excess of \$50,000 a Contract for Construction. Prior to issuance of the Purchase Order the Contractor shall provide to the Director of Purchasing a Performance and Payment Bond (see Section 002020 Supplementary General Conditions 1.02) and the policies of insurance or insurance certificates as required by the Contract Documents (see Section 002020 Supplementary General Conditions 1.03) and listed in the Award Letter.
- B. Time Limits for Execution of Agreement.
  - 1. The successful Bidder shall supply the required paperwork their Financial Statement (if not supplied with their Bid), Certificate of Insurance and their Performance and Payment Bond) to the ISU Purchasing Department within ten (10) calendar days after receipt of the ISU Award Letter.
- C. In the case a Bidder whose Bid is accepted, fails to perform their Bid by providing the required paperwork within ten (10) calendar days after receipt of the Award Letter, then this failure may be cause for their certified check, draft or Bid Bond, and the proceeds thereof, to remain the absolute property of the Owner, as liquidated damages, it being impossible to estimate the amount of damages such failure would occasion.

**3. INDEMNIFICATION**

- A. Bidders, in consideration of the privilege of Bidding, shall specifically waive all rights both legal and equitable which they have or might be construed to have against Indiana State University because of any action taken in accepting or rejecting bids and proposals, for themselves, and /or for subcontractors, suppliers and/or manufacturers, who may file an action based on any such acceptance or rejection. Bidders shall be liable for any resultant reasonable attorney fees and expenses incurred by Indiana State University.

**4. ALLOWABLE CONTRACTOR MARK-UPS FOR PROJECT CHANGES**

- A. When a change in the Work is contemplated which may affect the Contract Sum or duration of the Work, the Architect/Engineer/Owner will issue a 'Proposal Request' detailing the Work involved in such proposed change. Upon receipt of such 'Proposal Request,' the Contractor shall promptly, but in no case longer than five (5) working days, issue a reply or 'Change Proposal,' stipulating the change in cost of Project and/or duration as a result of the proposed change.
- B. The extra work shall be performed for the cost of the labor payroll plus 15% of the labor payroll and the cost of the material plus 5% of the material cost. Said markup fees are intended to compensate for the cost of payroll taxes, insurance of all kinds, all taxes of the Contractor, including State Taxes, Federal Income Tax, Unemployment, and FICA Taxes, as well as all other overhead costs, expenses, and carrying charges whatsoever, including the profit to be derived from such additional Work. Labor payroll is defined as the actual hourly labor cost plus any fringes payable.

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- C. In case such Work is performed by a Subcontractor or a lower tier Contractor with the Owner's consent, the Work shall be marked up as indicated in Item B by the Contractor actually performing the Work. Each succeeding Contractor may mark up their direct labor and material costs as indicated in Item B. Otherwise each succeeding Contractor, including the Prime Contractor, may add 5% for handling/coordination. Additional mark-ups of a Subcontractor's costs shall not be permitted.
  - D. Costs for bond premiums are allowable provided documentation from the Bonding Company is included detailing the added bond cost premium, the current bond total and the new bond total."
5. ADDENDA
- A. All Addenda (if any) for the Project will be will be posted to the ISU Plan Room.
  - B. Indicate receipt of Addenda on the Bid Request Form in the spaces provided for acknowledgement. Failure to indicate receipt may be cause to disqualify a Bid.
6. RESPONSIBILITY FOR DOCUMENTS.
- A. The prime Contractor and all their Subcontractors are responsible for all documents provided with this Bid Request.
7. E-VERIFY REQUIREMENTS
- A. In accordance with Indiana Code 22-5-1. 7 as amended, each Contractor in any tier of a public works project shall not knowingly employ unauthorized aliens. Every contractor shall enroll in and verify the work eligibility status of all employees hired after June 30, 2015 using the U.S. Citizenship and Immigration Services (USCIS) E-Verify program as defined in IC §22-5-1.7-3, unless the E-Verify program no longer exists.
  - B. The Prime Contractor shall require their subcontractors who perform work under this Contract to certify to the Prime Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Prime Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor. The successful Prime Contractor and its sub-contractors at all levels shall comply with all provisions of the statute or the Contract is subject to cancellation.
  - C. Bidders shall submit a signed copy of Section 001045 Bidders Certification of Authorized Employment with their Bid to certify compliance with this requirement.
8. SCOPE OF WORK BASE BIDS
- A. Selective General Construction, Electrical and Mechanical demolition
  - B. Install new carpeting and ceiling
  - C. Modify HVAC as shown on M Series Drawings
  - D. Install new lighting
9. SCOPE OF WORK ALTERNATE Bids
- A. Demolition of existing carpeting.
  - B. Installation of vinyl plank flooring

**Bid Request**

**Bid # B0026303**

**10. SUBCONTRACTOR LIST**

Bidder shall provide the names of all applicable Subcontractors

Description	Subcontractor
Flooring Work	_____
Ceiling Work	_____
Mechanical Work	_____
Electrical Work	_____

**11. SUPPLIER MANUFACTURER LIST**

Bidder shall provide the names of all applicable Suppliers and Manufacturers

Product Description	Supplier	Manufacturer
Ceiling Grid	_____	_____
Ceiling Tile	_____	_____
Carpet	_____	_____
Vinyl Plank Flooring (Alternate Bid)	_____	_____
Diffusers	_____	_____
Lighting	_____	_____

**12. PRE-CONSTRUCTION MEETING**

- A. A pre-construction meeting will be held as soon as possible after Award of the Project at which time the Contractor shall have a proposed schedule of work to complete the work within the allowable time given.

End of BR B0026303

attachments

Bid Request

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Bid # B0026303

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CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND  
VOLUNTARY EXCLUSION

This certificate is required by the regulations implementing Executive Order 12549 Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part V11 of the May 26, 1988 Federal Register (pages 19160-19211).

Is your organization, or its principals, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction, by any Federal department or agency?       Yes       No

Are any of your subcontractors, or its principals, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction, by any Federal department or agency?       Yes       No

\_\_\_\_\_  
Your Company's Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Your Name

\_\_\_\_\_  
Date

END OF SECTION 001020

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CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND  
VOLUNTARY EXCLUSION

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MBE, WBE AND VBE COMPLIANCE INSTRUCTIONS

PART 1 – CONSTRUCTION SERVICES – INSTRUCTION TO BIDDERS

1.01 MBE, WBE AND VBE COMPLIANCE INSTRUCTIONS

- A. Indiana State University is committed to providing minority owned, women owned and veteran owned firms every opportunity to compete for its business. Efforts will be made to identify, solicit Bids, and communicate with minority owned, women owned and veteran owned Bidders regarding the University requirements and the Bidding process, so that they may become more viable Bidders. Bidding shall be conducted according to the "Governor's Commission on Minority Business Development," Indiana Statute 4-13-16.5, Indiana Veteran Owned Small Business Program Statute IC 5-22-14-3.5 and by Federal Uniform Procurement Guidance 2 CFR 200.320, concerning minority, women, and veteran owned business enterprises. The Governor's Commission is charged with establishing annual goals for the use of minority and women owned business enterprises. Goals for Veteran Owned Business shall be the same as those established by the State of Indiana's Indiana Department of Administration (IDOA).
- B. "Minority Owned Business Enterprise" (MBE), "Women Owned Business Enterprise" (WBE) and "Veteran Owned Business Enterprise" (VBE) means an individual, partnership, corporation, limited liability company, or joint venture of any kind that is owned and controlled by one or more persons who are United States citizens and are certified by the State of Indiana to be affiliated with a Minority Owned Business Enterprise, Women Owned Business Enterprise and Veteran Owned Business Enterprise firm.
1. "Owned and controlled" means having:
- a. Ownership of at least fifty-one percent (51%) of the enterprise, including corporate stock of a corporation;
  - b. Control over the management and active in the day-to-day operations of the business; and
  - c. An interest in the capital, assets, and profits and losses of the business proportionate to the percentage of Ownership.
2. "Minority group" means:
- a. Black Americans;
  - b. Native American;
  - c. Hispanic Americans;
  - d. Asian-Pacific Americans;
  - e. Subcontinent Asian Americans
- C. Bidders shall take all necessary and reasonable steps to ensure that Minority Owned Business Enterprise (MBE), Women Owned Business Enterprise (WBE) and Veteran Owned Business Enterprise (VBE) have the maximum opportunity to compete for and perform work included in this project.
- D. Bidders shall indicate qualifying business enterprises by placing (MBE), (WBE) or (VBE) after the prime contractor's and subcontractor's name listed on the "Participation List of Prime/Subcontractors" submitted with the bid. ISU reserves the right to verify all information included in the "Participation List of Prime/Subcontractors." Bidders are expected to make a good faith effort to meet the Minority Owned Business Enterprise (MBE), Women Owned Business Enterprise (WBE) and Veteran Owned Business Enterprise (VBE) participation goals or indicate on the "Participation List of Prime/Subcontractors" the reasons for a lack of Minority Owned Business Enterprise (MBE), Women Owned Business Enterprise (WBE) and Veteran Owned Business Enterprise (VBE) participation in the project.
- E. Bidders shall submit proof of MBE, WBE and VBE certification for each MBE, WBE, and VBE listed. Certification shall be by the appropriate State of Indiana Department or any other certifying entity

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MBE, WBE AND VBE COMPLIANCE INSTRUCTIONS

recognized by the state or federal government. ISU will consider MBE, WBE and VBE participation from non-certified entities.

- F. The Prime Contractor receiving the Bid award will be expected to report each quarter using ISU's Subcontractor Tracking System located on the Internet.
- G. The Owner, at its discretion, may waive in part or in whole the minority business enterprise, women business enterprise and/or veteran business enterprise requirement if in the opinion of the Owner it would be impractical, or not in the best interest of the Owner.

PART 2 – NOT USED

PART 3 – NOT USED

END OF SECTION 001030



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 MBE/WBE/VBE PARTICIPATION LIST OF PRIME AND SUBCONTRACTORS

Bid Number \_\_\_\_\_

Date \_\_\_\_\_

This Form must be completed by the Apparent Low Bidder(s) or any MBE/WBE/VBE Bidder(s) and submitted by 12:00 noon local time on the day following the Bid opening to the ISU Purchasing Department.

Fax (812)-237-3599

Prime Contractor's Name

Circle if an MBE, WBE and/or a VBE

	MBE	WBE	VBE	MBE	WBE
<u>Subcontractor's Name</u>	<u>Circle if an MBE, WBE and/or a VBE</u>		<u>Amount To Be Paid to Subcontractor</u>	<u>Percentage of Total Bid Amount</u>	
	MBE	WBE	VBE	\$ _____	_____ %
	MBE	WBE	VBE	\$ _____	_____ %
	MBE	WBE	VBE	\$ _____	_____ %
	MBE	WBE	VBE	\$ _____	_____ %
	MBE	WBE	VBE	\$ _____	_____ %
	MBE	WBE	VBE	\$ _____	_____ %
	MBE	WBE	VBE	\$ _____	_____ %
	MBE	WBE	VBE	\$ _____	_____ %
	MBE	WBE	VBE	\$ _____	_____ %
	MBE	WBE	VBE	\$ _____	_____ %
	MBE	WBE	VBE	\$ _____	_____ %
	MBE	WBE	VBE	\$ _____	_____ %

If no MBE, WBE or VBE contractors are listed above please indicate reason(s) why:

- Unable to locate any MBEs, WBEs or VBEs.
- Unable to secure competitive pricing from any MBEs, WBEs or VBEs.
- Other reasons, please describe: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

END OF SECTION 001040

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MBE/WBE/VBE PARTICIPATION LIST OF PRIME AND SUBCONTRACTORS

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BIDDER'S CERTIFICATION OF AUTHORIZED EMPLOYMENT

In accordance with Indiana Code 22-5-1. 7 as amended, each Contractor in any tier of a public works project shall not knowingly employ unauthorized aliens. Every contractor shall enroll in and verify the work eligibility status of all employees hired after June 30, 2015 using the U.S. Citizenship and Immigration Services (USCIS) E-Verify program as defined in IC §22-5-1.7-3, unless the E-Verify program no longer exists.

The Prime Contractor shall require their subcontractors who perform work under this Contract to certify to the Prime Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Prime Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor. The successful Prime Contractor and its sub-contractors at all levels shall comply with all provisions of the statute or the Contract is subject to cancellation.

I hereby certify that I have read and understand the "Contractor's Certification of Authorized Employment" provision of the Contract Documents In Section 002011 Amendments to General Conditions Article 13, subparagraph 13.1.7.3 and its subparagraphs and that the undersigned and proposed and actual sub-contractors at all tiers shall comply with the provisions of the Statute

On behalf of and as authorized by the Bidder, I affirm and depose that the Bidder and our Subcontractors shall not knowingly employ unauthorized aliens.

\_\_\_\_\_  
(Bidder - Please print full name of your proprietorship, partnership, or corporation)

\_\_\_\_\_  
(Name - Authorized Signing Officer)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Signature)

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

END OF SECTION 001045

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BIDDER'S CERTIFICATION OF AUTHORIZED EMPLOYMENT

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**DRAFT AIA® Document A201™ - 2007****General Conditions of the Contract for Construction**

for the following PROJECT:

*(Name and location or address)*

&lt;&lt; &gt;&gt;

&lt;&lt; &gt;&gt;

**THE OWNER:***(Name, legal status and address)*

&lt;&lt; &gt;&gt;&lt; &gt;&gt;

&lt;&lt; &gt;&gt;

**THE ARCHITECT:***(Name, legal status and address)*

&lt;&lt; &gt;&gt;&lt; &gt;&gt;

&lt;&lt; &gt;&gt;

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## **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.

**§ 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.

## **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;
- .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.

#### § 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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PART 1 – GENERAL

1.01 AMENDMENTS TO GENERAL CONDITIONS

- A. The General Conditions for this Project shall be the American Institute of Architects' Document A201-2007, "General Conditions of the Contract for Construction, Articles 1 through 15, inclusive, 38 pages, and hereafter referred to as the "General Conditions." Such document is specifically made a part of the Contract Documents.
- B. The following amendments shall modify, delete, and supplement the General Conditions. Where any Article, Paragraph, or Subparagraph in the General Conditions is supplemented by one of the following Paragraphs, the provisions of such Article, Paragraph, or Subparagraph shall remain in full force and effect and the supplemental provisions shall be considered as added thereto. Where any Article, Paragraph not so amended, deleted, voided, or superseded shall remain in full force and the order and numbering of subsequent articles, Paragraphs or Subparagraphs shall be changed to read as if in sequence.
- C. Refer to other Division 00 documents for additional supplemental requirements.

PART 2 – AMENDMENT ARTICLES

2.01 ARTICLE 1

- A. Subparagraph 1.1.1: Amend this Subparagraph by deleting the last sentence beginning with the words "Unless specifically enumerated" and substituting the following sentence: "The Contract Documents shall also include the Notice to Bidders, Instructions to Bidders, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Bid Form, Subcontractors and Materials Listing, Contractor's Non-Collusion Affidavit, and all portions of Addenda relating to Bidding Requirements."

- B. Add the following Subparagraph 1.1.7

"1.1.7 ARCHITECT/ENGINEER"

"Where the word Architect is used in the AIA A201-2007 it shall be inferred to also include the Design Engineer(s), e.g. Architect/Engineer, Engineer (for Engineer only Administered Projects).

- C. Add the following Section 1.7

"1.7 LITIGATION

1.7.1 All litigation under this Contract must be initiated in Vigo County, Indiana and Contractor consents to the jurisdiction of the Vigo County courts.

1.7.2 Contractor hereby waives its right to a jury trial in any matters litigated in Vigo County.

1.7.3 In any litigation initiated by Contractor, Contractor shall reimburse all attorney's fees and expenses incurred by Owner up to a maximum of \$100,000 provided Contractor has presented its claims as required by this Contract and the Owner has made a good faith offer to resolve any dispute prior to litigation. The determination of a 'good faith offer' shall rest solely with the Architect who will render their opinion in writing to Contractor or Owner upon request prior to Contractor initiating litigation or thereafter as requested. The Architect's decision is binding on Owner and Contractor and admissible in court as determinative of this issue.

1.7.4 In any litigation initiated by Owner against Contractor, provided Contractor was given the opportunity to resolve all issues prior to litigation being initiated and failed to do so through a reasonable offer, as determined by the Architect, then Contractor shall be responsible to reimburse all attorney's fees and expenses incurred by Owner for all litigation as well as for all pre-litigation activities engaged in by the Owner for

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investigating, evaluating, or mediating any claims, issues, or matters related to Contractor.”

2.02 ARTICLE 2

- A. Subparagraph 2.1.2: Delete this Subparagraph in its entirety.
- B. Subparagraph 2.2.5: Amend this Subparagraph by adding “electronically” after the word Documents in the second line.

2.03 ARTICLE 3

- A. Paragraph 3.2: Amend this Paragraph by deleting Subparagraph 3.2.1 in its entirety and replacing with the following new subparagraph 3.2.1 and its subparagraphs:

“3.2.1 By executing the Contract, the Contractor represents to the Owner that:”

“3.2.1.1 The Contractor has a high level of experience and expertise in the business administration construction, management, workplace health and safety supervision and superintendence of projects of similar size and complexity and that it will perform the Work with the care, skill and diligence of such a contractor.”

“3.2.1.2 Contractor and, to the best of its knowledge, its subcontractors are financially solvent, able to pay all debts as they mature and have sufficient working capital to complete the Work and all obligations thereunder.”

“3.2.1.3 The Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work.”

“3.2.1.4 Contractor is authorized to do business in the State of Indiana.”

“3.2.1.5 Contractor's execution of the Contract and its performance thereof are within its authorized powers.”

“3.2.1.6 Contractor has:”

“3.2.1.6.1 Studied the Contract Documents, understands their provisions and that that they are sufficiently detailed and complete to permit the Contractor to perform the Work in accordance with the Contract Documents, within the Contract Time and for the Contract Sum.”

“3.2.1.6.2. Inspected the Project site.”

“3.2.1.6.3 Investigated and satisfied itself as to:

“3.2.1.6.3.1 The site and locality where the Work is to be performed and the conditions and difficulties to be encountered, including access thereto.”

“3.2.1.6.3.2 The availability of utilities and access thereto.”

“3.2.1.6.3.3 Conditions affecting transportation, disposal, handling and storage of materials, supplies and equipment.”

“3.2.1.6.3.4 Any materials, supplies or equipment which are to be furnished by the Owner for the Contractor's use.”

“3.2.1.6.3.5 The type and availability of tools, equipment and facilities to perform the Work.”

“3.2.1.6.3.6 The availability and adequacy of labor and trades, and, if applicable, union wage scales, benefits, working conditions, craft jurisdictions, area practices and collective bargaining agreements affecting the Work.”

“3.2.1.6.3.7 Prevailing weather and climatological conditions.”

“3.2.1.6.3.8 All laws applicable to the Work and to the Contractor.”

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“3.2.1.6.3.9 All other factors which may affect the Contractor’s performance of the Work.”

- B. Paragraph 3.4: Amend this Paragraph by adding Subparagraphs 3.4.4 through 3.4.7 as follows:

“3.4.4 The Contractor shall employ competently trained and experienced engineers and supervisors, who shall coordinate general, mechanical, and electrical Work and crafts with the required construction progress. The Contractor shall exercise complete control over their Subcontractor(s) in a manner which will unite their efforts toward completion of the project as contracted.”

“3.4.5 The Contractor shall continuously maintain adequate protection of all their Work and the Work of Subcontractors from damage and shall hold harmless the Owner and Architect/Engineer from injury or loss arising in connection with this contract, including legal defense costs. The Contractor shall make good any such damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or those caused by agents or employees of the Owner.”

“3.4.6 The Contractor shall be responsible for and shall establish and verify exterior lines and the required elevations of all buildings and structures to be erected at the site.”

“3.4.7 The Contractor shall coordinate and expedite the Work of all lower tier Contractors.”

- C. Paragraph 3.5: Amend this Paragraph by adding Subparagraphs 3.5.1, 3.5.2, and 3.5.3 as follows:

“3.5.1 The Contractor shall warranty that all Work executed under the respective sections will be free from defects of materials and workmanship for the period of one (1) year from the Date of Substantial Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents. The Contractor further agrees that they will, at their own expense, repair and replace all such defective Work, and all other Work damaged that becomes defective during the term of the warranty. Where warranties are required, Contractor shall secure warranties in writing from Subcontractors, manufacturers and/or material suppliers addressed to and in favor of the Owner and deliver same to the Owner upon completion of Work. Delivery of warranties shall not relieve the Contractor from any obligations assumed under any other provisions of Contract.”

“3.5.2 Any damage to the building or its contents and/or Work of other Contractors caused by failure of any piece of equipment and/or faulty installation shall be repaired or replaced by the party or parties furnishing the original equipment/installation and paid for by the Contractor at fault.”

“3.5.3 An inspection of the installed Work and/or equipment will be made just before the end of the stipulated warranty period and any installations and/or equipment which, in the opinion of the Architect/Engineer and/or Owner, show undue wear, failure, incorrect operation, or otherwise do not conform to the letter and intent of the Contract Documents shall be repaired or replaced by the Contractor furnishing same at no additional charge.”

- D. Paragraph 3.6: Amend this Subparagraph by adding the words “Unless otherwise provided in the Contract Documents,” to the beginning of this Paragraph.

- E. Paragraph 3.9: Amend this Paragraph by adding Subparagraph 3.9.4 as follows:

“3.9.4 Subcontractors for any other Work shall have a competent superintendent at the site at all times when Work is being performed under their contracts.

- F. Paragraph 3.13: Amend this Paragraph by adding Subparagraph 3.13.1 as follows:

“3.13.1 The Contractor shall prepare an overlay sketch of the construction areas indicating spaces assigned for field office, storage sheds, containers, trailers and field



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shops, and for stockpiles and staging of materials for all trades. This sketch shall be submitted to the Owner and the Architect/Engineer for their information prior to moving any such equipment and materials onto the Project Site.”

- G. Paragraph 3.16: Amend this Paragraph 3.16 adding the following to the end:

“If Work is being executed at locations other than the Project site, the Contractor shall notify the Architect/Engineer where such Work is being executed, and at what time such Work will be ready for inspection, in order that the Architect/Engineer may inspect such Work Prior to its delivery to the Project Site.”

- H. Paragraph 3.18: Amend this Paragraph by adding Subparagraph 3.18.3 as follows:

“3.18.3 The Contractor shall indemnify the Owner and Architect/Engineer for any claim, demand or expense which may be made by reason of:

“.1 Any injury to person or property sustained by the Owner or by any person, firms, or corporations, if caused by the Contractor.”

“.2 Any injury to person or property sustained by any person, firms, or corporations caused by an act or omission of the Contractor or of any person, firm, or corporation directly or indirectly employed by him in connection with this Work, whether the said injury or damage occurs upon or adjacent to the Work.”

“.3 The Contractor, at his own cost, expense, and risk, shall defend any and all actions, suits, or other legal proceedings that may be rendered against the Owner and Architect/Engineer in any such action, suit, or proceedings.”

“.4 The Contractor shall indemnify the Owner and Architect/Engineer from any and all costs resulting from any claim or suits in connection with liens that may be brought or instituted against the Owner. Neither the final payment or any part of the retained percentage of the Contract shall become due until the Contractor has delivered to the Owner a complete release of all liens arising out of the Contract.”

2.04 ARTICLE 4

- A. Subparagraph 4.1.2: Delete this Subparagraph in its entirety.
- B. Subparagraph 4.2.7: Modify the first sentence of this Subparagraph by deleting the words “approve or take” and substituting the word “indicate.”
- C. Subparagraph 4.2.10: Amend this Subparagraph by adding the words “in writing” after the word “agree” in the first sentence.

2.05 ARTICLE 5

- A. Paragraph 5.3: Amend this Paragraph by adding the following sentence thereto:
- “Unless otherwise excepted, nothing contained in this Contract shall create any contractual relationship between any Subcontractor and the Owner.”

2.06 ARTICLE 6 (NO CHANGE)

2.07 ARTICLE 7

- A. Paragraph 7.1: Amend this Paragraph by adding the following new Subparagraph 7.1.4:

“7.1.4 When a change in the Work is contemplated which may affect the Contract Sum or duration of the Work, the Architect/Engineer will issue a ‘Proposal Request’ detailing the Work involved in such proposed change. Upon receipt of such ‘Proposal Request,’ the Contractor shall promptly, but in no case longer than five (5) working days, issue a reply or ‘Change Quotation,’ stipulating the change in cost of Project and/or duration as a result of the proposed change. This issuance of a Proposal Request does not, in any way, authorize commencement of the Work therein described. Should, after review and consultation with the Owner, the Architect/Engineer find the ‘Change Quotation’ by the

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Contractor to be acceptable, the Architect/Engineer will within thirty (30) calendar days issue a written 'Change Order' to the Contractor."

B. Add the following Subparagraph 7.1.5 as follows

"7.1.5 If Contractor proceeds with change order work before receiving a fully executed change order or change directive, then Contractor waives the right to object to the scope of work change, the amount of the change order, and the adjustment, if any, to the time of performance."

C. Amend Subparagraph 7.3.3 by adding the following Subparagraphs:

".5 Time and material."

".6 Extra Work performed under Item .5 above shall be upon the option of the Owner only in the event that the lump sum required under Item .1 is not acceptable."

".7 Extra Work shall be performed for the cost of the labor payroll plus 15% of the labor payroll and the cost of the material plus 5% of the material cost. Said markup fees are intended to compensate for the cost of payroll taxes, insurance of all kinds, all taxes of the Contractor, including State Taxes, Federal Income Tax, Unemployment, and FICA Taxes, as well as all other overhead costs, expenses, and carrying charges whatsoever, including the profit to be derived from such additional Work. Labor payroll is defined as the actual hourly labor cost plus any fringes payable as listed on the wage rate schedule(s) provided as required by the Bidding Documents.

".8 In case such Work is performed by a Subcontractor or a lower tier Contractor with the Owner's consent, the Work shall be marked up as indicated in 7.3.3.7 by the Contractor actually performing the Work. Each succeeding Contractor may mark up their direct labor and material costs as indicated in 7.3.3.7. Otherwise each succeeding Contractor, including the Prime Contractor, may add 5% for handling/coordination. Additional mark-ups of a Subcontractor's costs shall not be permitted.

".9 Costs for bond premiums are allowable provided documentation from the Bonding Company is included detailing the added bond cost premium, the current bond total and the new bond total."

D. Subparagraph 7.3.7: Amend the following:

.1 Delete the text and replace with:

".1 The cost of the labor payroll plus 15% of the labor payroll;"

.2 Delete the semicolon at the end of the sentence and add "plus 5% of the total of the costs;"

.3 Delete the semicolon at the end of the sentence and add "plus 5% of the total of the costs;"

.4 Delete all text following the word bonds in the first line and replace with ",with documentation from the Bonding Company including details of the added bond cost premium, the current bond total and the new bond total;"

.5 Delete the text and replace with:

".5 Additional costs of supervision directly attributable to the change if the change results in supervision of change work at a time outside the normal work hours of the Project."

E. Paragraph 7.3: Add the following new Subparagraphs 7.3.11, 7.3.12, and 7.3.13:

"7.3.11 When extra Work is performed under Item 7.3.3.2 above, said unit prices shall represent the total cost to the Owner and shall not be subject to any additional charges whatsoever."

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“7.3.12 In order to facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete breakdown of costs, including labor, material, and subcontracts. Labor and material shall be marked up in the manner prescribed herein. Where cost items consist of major subcontracts, such contracts shall be broken down in a similar fashion.”

“7.3.13 When changes are made that result in a credit to the Owner, the value of the credit will be established by the method indicated in Items 7.3.3.1 or 7.3.3.2”

2.08 ARTICLE 8 (NO CHANGE)

2.09 ARTICLE 9

A. Subparagraph 9.3.1: Amend this Subparagraph by deleting the words “if required” in the third line.

B. Paragraph 9.3: Amend this Paragraph by adding Subparagraph 9.3.4 as follows:

“9.3.4 The Owner will retain, until the Work is at least fifty percent (50%) complete, ten percent (10%) of the amount due the Contractor on account of approved progress payments. At the time the Work is at least fifty percent (50%) completed or thereafter, if the manner of completion of the Work and its progress are and remain satisfactory to the Owner and Architect/Engineer, and in the absence of other good and sufficient reasons, the Architect/Engineer will (upon presentation by the Contractor of Consent of Surety) recommend to the Owner that any remaining approved partial payments be paid in full. Regardless of the Owner’s decision relative to further retainage, all prior retainages that were withheld will be held until completion of the contract Work and all remedial Work, listed as conditions of substantial completion, and following final payment. If retainage is limited to ten percent (10%) of the first fifty percent (50%) of the contract amount, as described above, five percent (5%) will be withheld from payments for all subsequent change orders; therefore, the minimum retainage shall be five percent (5%) of the current contract amount.”

C. Subparagraph 9.6.3: Delete this Subparagraph in its entirety.

D. Subparagraph 9.6.5: Delete this Subparagraph in its entirety.

E. Paragraph 9.7: Delete the text of this Paragraph and replace with the following new Subparagraphs 9.7.1 and 9.7.2

“9.7.1 The Architect shall issue to the Owner a Certificate for Payment within seven calendar days after receipt of the Contractor’s Application for Payment. Upon receipt of the Certificate for Payment (Application for Payment) from the Architect, the Owner will endeavor to make payment to the Contractor within fifteen calendar days. If payment is not made within a reasonable time, 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 shutdown, delay and start-up, plus interest as provided for in the Contract Documents.”

“9.7.2 If an Application for Payment is being held for just cause, the Architect shall notify the Contractor in writing of the cause and what remedial action must be taken for the Application for Payment to be released for payment.

F. Subparagraph 9.10.2: Amend this Subparagraph by deleting the word “and” in the eighth line and adding the following after the “Owner” in the eleventh line:

“and (6) the Architect/Engineer has received the required Record Drawings, brochures, manuals, operating instructions, warranties, affidavits, final application for payment, any other special data requirements and has performed a final inspection and confirmed that all items of completion are correct and acceptable at which time he will initiate a ‘Final Completion’ letter establishing the date of Final Completion.”

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2.10 ARTICLE 10

- A. Subparagraph 10.2.2: Amend this Subparagraph by adding the following to the end thereof:

“In the event of conflict between these Contract Documents and any Federal, State, or Local Authority laws, rules, regulations, or requirements, the most stringent requirement shall govern the Work.”

- B. Subparagraph 10.3.1: Amend this Subparagraph by deleting the phrase “and Architect” in the sixth line.
- C. Subparagraph 10.3.2: Amend this Subparagraph by deleting the phrase “and Architect” in the second sentence; deleting the phrase “and the Architect” from the third sentence; and by deleting the words “either” and “or Architect” from the fourth sentence; by replacing the phrase, “and the Architect have” with the word “has” in the fourth sentence.

- D. Paragraph 10.3 add the following Subparagraph 10.3.7

10.3.7 “The Contractor shall also comply with all the safety paragraphs listed in Section 003000 of the Contract Documents. In the event of conflict between 10.3 and Section 003000, Section 003000 shall prevail.”

2.11 ARTICLE 11

- A. Article 11: Insert a new Subparagraph 11.1 and renumber each succeeding Paragraph accordingly:

11.1 See Specification Section 002020 for additional requirements. In the event of conflict between Section 002020 and this Paragraph 11, requirements of Section 002020 shall prevail.

- B. Subparagraph 11.1.1 (renumbered 11.2.1): Amend this Subparagraph by adding the phrase, “and that are acceptable to the Owner,” following the word “located,” in the second line.
- C. Subparagraph 11.1.1 (renumbered 11.2.1): Amend this Subparagraph by adding the phrase, “, Indiana State University, the Indiana State University Board of Trustees and the Architect/Engineer,” following the word “Contractor,” in the second line.
- D. Subparagraph 11.1.1 (renumbered 11.2.1): Amend this Subparagraph by adding Sub-Subparagraphs .9 and .10 as follows:

“.9 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

Premises Operations (including X, C, and U coverage’s as applicable)

Independent Contractor’s Protective

Products and Completed Operations

Personal Injury Liability with Employment Exclusion deleted

Contractual, including specified provision for the Contractor’s obligations under Paragraph 3.18

Owned, non-owned and hired motor vehicles”

“.10 Broad Form Property Damage including Completed Operations: If the General Liability coverage’s are provided by a Commercial General Liability Policy on a claims made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage’s required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.”

- E. Subparagraph 11.1.2 (renumbered 11.2.2): Add the following renumbered Subparagraph 11.2.2.1

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“11.2.2.1 The insurance required by renumbered Subparagraph 11.2.1 shall be written for not less than the following limits, or greater if required by law:

See Section 002020 for Insurance Requirement Levels

F. Subparagraph 11.1.3 (renumbered 11.2.3): Amend this Subparagraph by changing the word “30” to “60” in the second sentence.

G. Subparagraph 11.1.3 (renumbered 11.2.3): Amend this Subparagraph by deleting the last sentence beginning with the phrase, “Information concerning reduction...” And substituting the following:

“The form of the certificate shall be AIA Document G715, SUPPLEMENTAL ATTACHMENT for Acord Certificate of Insurance 25-S (7/90). Contractor shall furnish promptly to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. Certificates of Insurance shall name the Owner (Indiana State University Board of Trustees) and Architect/Engineer as ‘Additional Insured’s.’”

H. Paragraph 11.1 (renumbered 11.2): Amend this Paragraph by adding Subparagraph 11.2.5 as follows:

“11.2.5 The Contractor, in connection with the above mentioned Workmen’s Compensation and Occupational Disease Insurance, shall furnish to the Owner, prior to commencement of the Work, duly executed and validated forms as prescribed by the Indiana Industrial Board showing that such insurance is in full force and effect.”

I. Sub-subparagraph 11.3.1.1 (renumbered 11.4.1.1): Amend this Subparagraph by adding the following Subparagraph 11.4.1.1.1:

“11.4.1.1.1: Such Insurance shall not insure against loss due to theft of Contractor’s, Subcontractor’s, Sub-Subcontractor’s tools, equipment, and other personal property. The responsibility to guard against such thefts shall lie with the respective Contractor, Subcontractor, or Sub-Subcontractor whose tools, equipment, and other personal property are susceptible to such thefts.”

J. Subparagraph 11.3.1.3 (renumbered 11.4.1.3): Add the following phrase to the end of the sentence:

The deductible amount shall be \$25,000.00 unless otherwise advised by the Owner.

K. Subparagraph 11.3.9 (renumbered 11.4.9): Delete this Subparagraph in its entirety.

## 2.12 ARTICLE 12

A. Subparagraph 12.2.2.1: Amend this Subparagraph by adding the following sentence to the end:

“Where special warranties of longer duration are required, the Contractor shall secure warranties from Subcontractors, manufacturers and/or material suppliers as applicable, addressed to and in favor of the Owner, and deliver copies of same to the Owner upon completion of the Work. Delivery of said warranties shall not relieve Contractor of any obligation assumed under any other provisions of the Contract.”

## 2.13 ARTICLE 13

A. Subparagraph 13.1: Delete the text in its entirety and replace with the following:

“13.1 Contractor and all Subcontractors are responsible to comply with Indiana Code as it pertains to public works projects. The following are notable requirements set forth in IC 5-16-13, in effect as of July 1, 2015, but are not inclusive of all requirements.”

B. Subparagraph 13.1: Add the following numbered Subparagraph 13.1.1:

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“13.1.1 Contractor agrees, and represents to Owner, that at least 15% of the Contract Price (at the time this Agreement is executed) is comprised of any combination of the following: 1) Work performed by Contractor’s employees; 2) Services supplied directly by Contractor’s employees; or 3) Materials supplied directly by Contractor.

- C. Subparagraph 13.1: Add the following numbered Subparagraph 13.1.2:

“13.1.2 Contractor and all Subcontractors, regardless of tier, shall not pay cash to its employees for Work performed on this public works Project.”

- D. Subparagraph 13.1: Add the following numbered Subparagraph 13.1.3:

“13.1.3 Contractor and all Subcontractors, regardless of tier, shall comply with federal Fair Labor Standards Act of 1938.”

- E. Subparagraph 13.1: Add the following numbered Subparagraph 13.1.4:

“13.1.4 Contractor and all Subcontractors, regardless of tier, shall be in compliance with workers compensation requirements of Indiana Code 22-3-5-1 and Indiana Code 22-3-7-34 and commits worker’s compensation fraud if such Contractor or Subcontractor falsely classifies an employee as an independent contractor, sole proprietor, owner, partner, officer, or member of a limited liability company.”

- F. Subparagraph 13.1: Add the following numbered Subparagraph 13.1.5:

“13.1.5 Contractor and all Subcontractor, regardless of tier, shall be in compliance with unemployment compensation system requirements of Indiana Code 22-4-1 through 22-4-39-5.”

- G. Subparagraph 13.1: Add the following numbered Subparagraph 13.1.6:

“13.1.6 Contractor and all Subcontractors, regardless of tier, shall be in compliance with requirements for drug testing of its employees set forth in Indiana Code 4-13-18-1 through 4-13-18-7 if estimated cost of public works Contract is at least \$150,000. With each application for payment the Contractor shall submit an affidavit, dated and signed by the Contractor, that neither they nor, to their knowledge, any of their subcontractors has violated the “Drug Testing Program provision of the Indiana Code.”

- H. Subparagraph 13.1: Add the following numbered Subparagraph 13.1.7:

“13.1.7 Following provisions shall be in effect for Contracts awarded after March 31, 2018.”

- I. Subparagraph 13.1.7: Add the following numbered Subparagraph 13.1.7.1:

“13.1.7.1 Contractor and Subcontractors, regardless of tier, shall preserve its payroll and related records for three (3) years after completion of the project work and such records shall be open to inspection by the Indiana Department of Workforce Development.”

- J. Subparagraph 13.1.7: Add the following numbered Subparagraphs 13.1.7.2 and 13.1.7.2.1:

“13.1.7.2 Recommended Employment of Apprentices”

“13.1.7.2.1 Owner strongly recommends that Contractor employs apprentices from each building trades craft involved in the Project to the maximum extent feasible. In doing so, the Contractor shall consider whether such apprentices are indentured into a Joint Apprenticeship Training Program or other comparable bona fide apprenticeship training program, registered and certified with the U.S. Department of Labor, Bureau of Apprenticeship and Training and shall use as a guide the Apprenticeship Standards of the Labor-Management Contract for the appropriate jurisdictional area when determining the appropriate ratio of apprentices from each respective craft.”

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- K. Subparagraph 13.1.7: Add the following numbered Subparagraphs 13.1.7.3, 13.1.7.3.1 and 13.1.7.3.2:

“13.1.7.3 Contractor's Certification of Authorized Employment (E-Verify Requirements.)”

“13.1.7.3.1 In accordance with Indiana Code 22-5-1. 7 as amended, each Contractor in any tier of a public works project shall not knowingly employ unauthorized aliens. Every contractor shall enroll in and verify the work eligibility status of all employees hired after June 30, 2015 using the U.S. Citizenship and Immigration Services (USCIS) E-Verify program as defined in IC §22-5-1.7-3, unless the E-Verify program no longer exists.

“13.1.7.3.2 The Prime Contractor shall require their subcontractors who perform work under this Contract to certify to the Prime Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Prime Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor. The Prime Contractor and its sub-contractors at all levels must comply with all provisions of the statute or the Contract is subject to cancellation.”

- L. Subparagraph 13.1.7: Add the following numbered Subparagraphs 13.1.7.4 and 13.1.7.4.1

“13.1.7.4 Non-Collusion Affidavit”

“13.1.7.4.1 The Bidder, by its officers and agents or representatives present at the time of filing their bid, being duly sworn, say on their oaths that neither they nor any of them have in any way, directly or indirectly, entered into any arrangement or agreement with any other bidder, or with any public office of the State of Indiana, of any county or municipality or other public offices whereby such affiance or either of them, has paid or is to pay to such other bidder or public officer any sum of money, or has given or is to give to such other bidders or public officer anything of value whatever, or such affiance of affiance or either of them has not, directly or indirectly entered into any arrangement or agreement with any other bidder or bidders, which tends to or does lessen or destroy free competition in letting of the contract sought for by the attached bids; that no inducement of any form or character other than which appears upon the face of the bid will be suggested, offered, paid, or delivered to any person whomsoever to influence the acceptance of the said bid or awarding of the contract, nor has this bidder any agreement or understanding of any kind whatsoever, with any person whomsoever to pay, deliver to, or share with any other person in any way or manner, any of the proceeds of the contract sought by this bid.”

- M. Subparagraph 13.1.7: Add the following numbered Subparagraphs 13.1.7.5 and 13.1.7.5.1

“13.1.7.5 Non-Discrimination”

“13.1.7.5.1 The Bidder and its Subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to their hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of their sex, race, natural origin, ancestry or religion or disability as prohibited under the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of the Contract.”

- N. Subparagraph 13.1.7: Add the following numbered Subparagraphs 13.1.7.6 and 13.1.7.6.1

“13.1.7.6 Certification of United States Steel”

“13.1.7.6.1 The Bidder certifies that the Bidder and all Subcontractors will comply with the statutory obligations to use steel products made in the United States.



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- O. Subparagraph 13.5.1: Add the following Subparagraph 13.5.1.1:  
“13.5.1.1: Prior to commencing the Project the Contractor shall submit a list of all proposed testing companies for the Project to the Architect/Engineer and Owner for approval.”
- P. Subparagraph 13.5.2: Add the following Subparagraph 13.5.2.1  
“13.5.2.1: Prior to testing, unless the testing company has been previously approved, the Contractor shall submit to the Architect/Engineer and Owner the proposed testing company for approval.”

2.14 ARTICLE 14

- A. Subparagraph 14.1.1: Amend this Subparagraph by deleting Sub-Subparagraph .4.
- B. Subparagraph 14.2.1: Amend this Subparagraph by adding a new Sub-Subparagraph 14.2.1.5 as follows:  
“.5 becomes financially incapable of completing the Work contemplated by the Contract Documents.”
- C. Add subparagraph 14.2.5 as follows  
“14.2.5 Contractor shall be responsible to reimburse Owner all attorney’s fees and expenses incurred by Owner if Contractor is terminated for cause.”

2.15 ARTICLE 15

- A. Subparagraph 15.1.2: Delete the text of this Subparagraph and replace by adding the following Subparagraph 15.1.2.1, Subparagraph 15.1.2.2 and Subparagraph 15.1.2.3:  
“Subparagraph 15.1.2.1 Claims must be initiated by written notice to the Architect within 21 calendar days after the occurrence of the event.”  
“Subparagraph 15.1.2.2 Notice of a claim must include what the claim is for, when the event occurred causing the claim, the amount of additional time (Project extension) being requested and any financial implications of the claim with sufficient specificity to allow the Owner an opportunity to modify the Project scope to remain within the Owner’s approved budget.”  
“Subparagraph 15.1.2.3 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.”
- B. Subparagraph 15.1.4 delete this Subparagraph in its entirety.
- C. Subparagraph 15.1.5 delete this and all its subparagraphs in their entirety.
- D. Subparagraph 15.3.2 Delete the text in its entirety and replace with the following:  
“15.3.2. If, through acts of neglect on the part of the Contractor, any other Contractor or Subcontractor shall suffer loss or damage on the Work, the Contractor shall agree to settle with such other Contractor or Subcontractor by negotiation or binding dispute resolution, if such other Contractor or Subcontractor will so settle. If such other Contractor or Subcontractor shall assert any claim against the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any such claim, including legal defense costs.”
- E. Subparagraph 15.3.3 In the first sentence after the word “fee” add a period and delete the remainder of that sentence.

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- F. Paragraph 15.4: Delete this Paragraph in its entirety. Additionally; delete all references and requirements for Arbitration throughout the entire AIA A201-2007 Document and replace with Litigation.

PART 3 – NOT USED

END OF SECTION 002011

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Preface: ***These Supplementary General Conditions supplement and modify AIA Document A201 General Conditions of the Contract for Construction (2007 Edition), General Conditions between the Owner and Contractor.***

PART 1 - SUPPLEMENTARY GENERAL CONDITIONS

1.01 DEFINITIONS

- A. "Contract". The Contract or Agreement, the Notice to Bidders, the Instructions to Bidders, the Bid or Proposal, the General Conditions, The Special Conditions, the Specification and Drawings, also any Addenda or the Modifications incorporated in any of the above documents before the execution of the Contract or Agreement.
- B. "Owner": The Indiana State University Board of Trustees.
- C. "Architect/Engineer": the individual or firm hired by the Owner to prepare the Construction Documents and to Administer the Contract.
- D. "Contractor": The person, firm or corporation who, with the Owner, executes the Contract, or the duly recognized assignee thereof.
- E. "Subcontractor": A person, firm or corporation who, under contract with Contractor, furnished material only, labor and materials, or labor only, at the site of or for the project.
- F. "Director": The Director of Department of Facilities Management at Indiana State University, or his duly authorized representative.
- G. "Surety": Any person, firm or corporation which has executed, as surety, the Contractor's performance bond securing the performance of the within contracts.
- H. "Work": Includes both materials and labor.

1.02 BOND

- A. Before any contract made for this work becomes valid, the Contractor shall furnish the Owner a satisfactory performance and payment bonds, in such form as the Owner may prescribe and with such surety or sureties as it may approve each in an amount equal to the total contract price. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. These bonds shall guarantee all labor and material to be as required, the faithful payment of any claim or liens from any cause for which the Contractor or any Subcontractor is liable, including those for labor, materials, utility service, transportation costs and for supplies, equipment, machinery (or the rental thereof).
- B. Licensed Sureties and Insurers
  - 1. All bonds required by the Contract Documents (such as the Bid Specifications, Award Letter, Contract for Construction, etc.) to be purchased and maintained by the Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. In addition to appearing on Circular 570 U.S. Dept. of the Treasury, such Surety or insurance company shall maintain an A.M. Best's Rating of not less than "A".

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- C. The surety bond shall contain the following paragraph:
1. "The said surety for value received hereby stipulates and agrees that no change, extension of time, alterations, or additions to the terms of the contract, or to the work to be performed hereunder, or the specifications accompanying them, shall in any way affect its obligations on this bond, alteration or addition to the terms of the contract, or to the work or the specifications."

1.03 INSURANCE

**NOTE: The dollar amounts shown in this paragraph are for jobs over \$50,000.  
See footnotes and amounts for jobs less than \$50,000.**

- A. The Prime Contractor(s) shall provide all insurances listed here-in in these Specifications and shall require the Subcontractor(s) to provide the same. The Prime Contractor(s) shall not commence work under this Contract until they have obtained all insurance required by these specifications and until such insurance has been approved by the Owner, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been obtained. Policies expiring on a fixed date before final acceptance of the project must be renewed and evidence of such renewal submitted to the Owner before such date.
- B. The Prime Contractor(s) shall furnish the Owner with satisfactory evidence of the insurance required, with satisfactory compliance as determined solely by Owner.
- C. It is solely the responsibility of the Prime Contractor(s) to confirm that the Subcontractor(s) are in compliance with the insurance requirements of these Specifications, to maintain copies of the Subcontractors insurance on file and to be prepared to provide evidence of these insurances to the Owner upon demand.
- D. Insurance Required:
  1. Worker's Compensation and Employers Insurance:
    - a. The Prime Contractor(s) shall maintain during the life of this contract Worker's Compensation and Employers Liability Insurance for all Prime Contractor's employees employed at or involved in any manner with the project, and, in case any work is sublet, the Prime Contractor(s) ~~must~~ shall require the Subcontractor(s), at their own expense, similarly to provide Worker's Compensation and Employers Liability Insurance for all of the Subcontractor's employees engaged in or involved in any manner with work under this contract. Such Workers' Compensation insurance will be in accordance with the statutory requirements of the State of Indiana, with and including Worker's Compensation for All Other States, if any. The Prime Contractor(s) shall and require Subcontractor(s) ~~shall~~ to provide insurance coverage equal to that provided under the Worker's Compensation Act, for the protection of the Contractor's employees not otherwise protected. Employer's liability coverage must be maintained in amounts not less than \$500,000/\$500,000/\$500,000. Limits may be provided through a single policy or a primary/excess policy basis.
  2. Commercial General Liability Insurance.<sup>1</sup>
    - a. The Contractor shall and require Subcontractors, at their own expense respectively, to maintain during the life of this contract Commercial General Liability Insurance insuring the Prime Contractor and any subcontractor, and owner and any other party required to be insured, from claims for bodily injury, death, personal injury and property damage which may arise from or on account of operations under this Contract, whether such operations be by the Prime Contractor(s) or by any

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<sup>1</sup> For Smaller Contracts, the following limits (including umbrella liability) are permitted:

Contracts \$25,000 to \$49,999.....	\$ 2,000,000
" \$10,000 to \$24,999.....	\$ 1,000,000
" \$ 9,999 and under.....	\$ 500,000

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Subcontractor or by anyone directly or indirectly employed by either of them and the amounts of such insurance shall be as follows:

- \$2,000,000 General Aggregate
- \$1,000,000 Combined Single Limit Bodily Injury, Property Damage
- \$1,000,000 Products/Completed Operations
- \$1,000,000 Personal Injury and Advertising Injury
- \$ 100,000 Fire Damage

The General Aggregate limit shall apply separately, in total, to this project only.

3. Business Auto Insurance<sup>2</sup>:

- a. The Prime Contractor(s) shall and shall require all Subcontractors to maintain at their own expense respectively, at all times during the life of this contract, business auto insurance covering all liability and claims arising from the ownership, use, maintenance, operation, loading or unloading of automobiles anywhere in the United States, in connection with the performance of the Contract, whether such automobiles are owned, hired, or non-owned by the Contractor or Subcontractors.
- b. Such auto insurance shall be written with a limit of not less than \$1,000,000 per occurrence as a combined single limit for Bodily Injury and Property Damage coverage.

4. Umbrella Liability Insurance<sup>2</sup>:

- a. The Prime Contractor(s) shall and shall require all Subcontractors to maintain at their own expense respectively, at all times during the life of this Contract, Umbrella Liability Insurance providing excess coverage over the above specified primary insurance in an amount not less than:
  - \$1,000,000 for contracts \$50,000 to \$99,999.99
  - \$2,000,000 for contracts \$100,000 to \$999,999.99
  - \$3,000,000 for contracts \$ 1,000,000 to \$2,999,999.99
  - \$5,000,000 for contracts over \$3,000,000

E. Additional Insurance Requirements:

1. The Prime Contractor(s) shall and shall require all Subcontractors to include Indiana State University, Indiana State University Board of Trustees and any Architect/Engineer Firm hired by Indiana State University for the Project, as an additional insured on their Commercial General Liability policies with regard to this contract.
2. Certificate(s) of Insurance shall include an endorsement of a Waiver of Subrogation in favor of the Owner for Commercial General Liability Insurance, Umbrella Liability Insurance, Worker's Compensation and Employers Liability Insurance and Business Auto Insurance.
3. With regard to the above mentioned Commercial General Liability, Business Auto, and Umbrella Liability Insurance, if in the event of any major change or cancellation of such policy, the Prime Contractor(s) shall and shall require all Subcontractors to give a 30-day advance notice to the Owner.
4. The Prime Contractor(s) shall and shall require of all Subcontractors that the insurance companies must have an A.M. Best's rating of not less than an "A" for projects over \$150,000 and a rating of B+ or higher for projects under \$150,000 and that the insurance companies are duly licensed or authorized in the jurisdiction in which the Project is located to issue insurance policies for the limits and coverages so required.

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<sup>2</sup> For Smaller Contracts, the following limits (including umbrella liability) are permitted

Contracts \$25,000 to \$49,999.....	\$2,000,000
\$10,000 to \$24,999.....	\$1,000,000
\$ 9,999 and under.....	\$ 500,000

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F. Builders Risk Insurance:

1. The Owner agrees to provide property insurance including Builders Risk insurance for property under construction, and all materials and labor at or within 1,000 feet of the site intended for use in the "work" or project. Pursuant to this agreement, Owner hereby affirms the policy contains a waiver of subrogation in favor of the contractor or subcontractors should loss or damage of the type insured against result in loss to covered property; and Owner agrees to release from liability the contractor, to the extent such loss or damage is insured by said policy.
2. Coverage does not extend to personal property, tools, equipment, scaffolding, staging, or similar equipment of the contract or subcontractor(s), or any employees thereof.
3. Notwithstanding the foregoing however, Contractor is responsible for the property insurance deductible of \$25,000 applicable to each covered loss to the work or project. Contractor acknowledges and affirms it will, without delay, pay the deductible, or if the loss remains within the deductible, pay that part of the deductible that equals the loss amount.

G. Indemnification:

1. The Prime Contractor shall and shall require Subcontractors to indemnify the Owner and any other party required to be insured from all claims arising from the failure of the Prime Contractor(s) to require the Subcontractors to provide the insurance required by these Specifications.
2. Notwithstanding any other provision to the contrary, the Contractor(s) agree to indemnify the Owner only for losses due to personal injury, or property damage to the extent caused by Contractor's negligent acts or omissions, or the negligent acts or omissions of Contractor's employees, agents and subcontractors during the performance of this Contract, but not to the extent caused by others. The Contractor shall defend Owner on claims that do not present a conflict of legal theory or fact between Owner and Contractor. Each party shall defend itself on any claim that does present a conflict of legal theory or fact between the parties.
3. Under no circumstances shall either party be liable for any loss, damage or delay due to any cause beyond either party's reasonable control, including but not limited to acts of government, fire, explosion, theft, weather damage, flood, earthquake, riot, civil commotion, war, mischief or act of God.
4. In the event of a strike or work stoppage by Contractor's employees, the Contractor agrees to use its best efforts to fulfill its obligations pursuant to their contract utilizing management and supervisory personnel.
5. Under no circumstances shall either party be liable to the other for special, indirect, or consequential damages of any kind including, but not limited to, loss of profits, loss of good will, loss of business opportunity, additional financing costs or loss of use of any equipment or property, whether in contract, tort (including negligence), warranty or otherwise, notwithstanding any indemnity or other provision to the contrary.

1.04 SUBCONTRACTORS

- A. At the time of Bid the Prime Contractor(s) (Bidder(s)) shall provide the names of the proposed Subcontractors listed in Appendix A of the Bid Form. Prior to the Awarding of the Contract, the Contractor shall submit to the Owner, in writing, the names of all the proposed Subcontractors and major material vendors. All Subcontractors shall be licensed and bonded and shall be held to the same level of experience and qualifications as are required of the Prime Contractor (Bidder) in Section 001000 NOTICE TO BIDDERS last paragraph.
- B. The Prime Contractor shall be responsible for the acts and omissions of his Subcontractors and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him.
- C. Nothing contained in the Contract shall create any contractual relationship between any Subcontractor and the Owner, and no Subcontractor will be recognized as a party to the Contract.

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- D. The Prime Contractor shall use the Subcontractors, Suppliers, Materials and Equipment as listed in the Bid Form Appendix "A" submitted at the time of Bid. There shall be no changes permitted to this list except as listed in Section 001010 Paragraph 3.14 APPENDIX A, Item B.1.

1.05 DRAWINGS

- A. The drawings referred to in these specifications show such plans and details as are regarded necessary by the Architect/Engineer and/or the Owner to properly illustrate the work required, to estimate the cost of the work, and to complete its construction.
- B. The Architect/Engineer and/or the Owner will from time to time furnish such additional detail and working drawings as may be deemed necessary to interpret and explain the Contract drawings and all such additional drawings shall be of equal force with those mentioned above and shall be considered as forming part of this Contract.
- C. The general character of the work shall be subject to minor modifications when detailed or full sized drawings for such work are prepared.
- D. All lettering on drawings is to be considered a part of the drawings.
- E. All drawings, specifications, etc., are the property of the Owner and shall be returned before the final award is issued, if so requested.

1.06 RELATIONSHIP AND PRIORITY OF DOCUMENTS

- A. The documents comprising the Contract are complementary and what is called for by one shall be as binding as if called for by all. The intention of the Contract is to include all labor, materials, and equipment necessary for the proper execution of the work.
- B. In the case of a discrepancy between the requirements of the Drawings and the Specifications or between Sections of the Specifications:
  - 1. The more stringent shall apply.
  - 2. In equal situations the Specifications or as directed by the Owner prevails.

1.07 PERMITS

- A. The Contractor shall give all requisite notices to public officials, secure and pay for all permits, legal fees or charges, have the work inspected by all proper public authorities, pay all charges connected with such inspections and deliver the proper inspection certificates and all receipts for charges to the Owner.
- B. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the work. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Owner in writing, and any necessary change shall be accomplished by the appropriate modification. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the Architect, he shall assume full responsibility therefore and shall bear all cost attributable thereto.

1.08 SAMPLES

- A. The Contractor shall submit in writing to the Owner for approval samples and shop or installation drawings of the materials he proposes to use, or such other related materials as owner otherwise requests.
- B. Each sample shall be labeled, bearing the name and quality of the material, the Contractor's name, the date and a description of the sample. A letter from the Contractor stating that the samples conform to the requirements of the drawings and specifications shall accompany all such samples. Transportation charges on all samples shall be prepaid.
- C. Samples and drawings shall be submitted in due time so as to permit proper consideration without delaying the Contractor's operation. Material shall not be ordered until approval is



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received from the Owner, in writing. The use of any material will be permitted only so long as it remains equal to the approved sample.

1.09 CONTRACTOR'S SUPERVISION

- A. The Prime Contractor shall maintain on the Project site a competent Project Superintendent at all times any work is being performed; either by the Prime Contractor's workers or any Subcontractor's workers. **If the Project Superintendent is not on the Project site the Owner shall be notified immediately. If the Project Superintendent is not on the jobsite, without written prior approval or notification to be away from the jobsite, the Owner may be entitled to a \$1,000 credit for each day or part of the day the Project Superintendent is not onsite while actual work is being performed.**
- B. The Contractor's superintendent shall represent the Contractor during their absence and all directions given the superintendent shall be as binding as if given to the Contractor.

1.10 SUBSURFACE CONDITIONS

- A. Boring information, water levels, indications of surface and subsurface conditions and similar information given on the drawings or in the specifications are furnished only for the convenience of the Prime Contractors. Logs of available subsurface explorations, borings and drawings of existing site conditions may be examined by arrangement with the Owner. The Owner, Owner's Representative and their Consultants make no representation regarding the character and extent of the soil data or other surface or subsurface data and conditions to be encountered during the work and assume no responsibility and make no guarantee as to the accuracy or completeness of the information.
- B. Each Contractor by careful examination, shall inform itself as to the nature and location of the work, the conformation of the ground, subsoil and ground water conditions, the character, quality and quantity of the materials to be encountered, the character of equipment and the facilities needed preliminary to and during the prosecution of the work, the general and local conditions and all other matters which can in any way affect the work under his Contract. Each Contractor shall make its own deductions of surface and subsurface conditions which may affect methods or cost of construction of the work of its Contract and Contractor agrees that it will make no claim for damages or other compensation, should it encounter conditions during the progress of the work different from those as calculated and/or anticipated by it.

1.11 LAYING OUT AND UTILITY LOCATES

- A. The Contractor shall thoroughly examine the drawings and specifications before commencing work and report to the Owner if any discrepancy, errors, or defect appears, but he shall not be held responsible for their existence.
- B. The Contractor shall lay out his own work.
- C. Prior to any cutting, drilling, trenching, excavating or other earthwork the Contractor shall determine the exact location of all utility lines and appurtenances that could be encountered which are not shown on the drawings as follows.
  - 1. A minimum of forty eight (48) hours prior to commencing work the Contractor shall contact Indiana Locates for all public utility locates.
  - 2. A minimum of forty eight (48) hours prior to commencing work the Contractor shall contact the Project Coordinator for all ISU Utility locates.
- D. Failure to contact for the appropriate locates shall make Contractor solely responsible for all costs incurred to repair all damaged utility lines or appurtenances.
- E. The Contractor shall hand excavate within three (3) feet, or as required by the Utility Company, on either side of a marked utility unless exact depth of the marked utility is known and the planned work will in no way be in close proximity with the utility line or appurtenance.

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SUPPLEMENTARY GENERAL CONDITIONS

1.12 MATERIAL AND LABOR

- A. Except as otherwise stipulated, the Contractor shall provide and pay for all materials, labor, tools and equipment necessary for the execution of the work.
- B. The Owner reserves the right to require the Contractor to discontinue the service of any workmen employed on the work whom he deems incompetent, negligent, or otherwise objectionable, and to suspend any portion of the work embraced in the Contract whenever, in his opinion, it would be inexpedient to start or continue such work.

1.13 DEFECTIVE WORK AND MATERIALS

- A. Any materials and workmanship found to be defective, improperly placed, not in strict conformity with the drawings and specifications, or defaced or injured through action of fire or elements, through usage by the Contractor or his employees or from any other cause, shall be removed immediately from the premises and satisfactory materials or work substituted therefore without delay. This shall include making good the work of other Contractors destroyed or damaged by such removal or replacement. The cost of the above replacements shall be borne by the Contractor responsible for the defective work or material.
- B. Should the Contractor in the execution of his work discover any imperfections or errors in the work of other Contractors that would interfere with the proper execution of his contract, he shall immediately report this fact to the Owner. Errors or imperfections in the work of other Contractors will in no case excuse installation of imperfect work by this Contractor.
- C. No previous inspection shall be held as an acceptance of defective work or materials or relieve the Contractor from the obligation to furnish sound materials or to perform satisfactory work in accordance with the contract requirements. The final payment shall not relieve the Contractor of the responsibility for faulty materials or workmanship and he shall remedy all such defects, settlements, or other work resulting there from, which shall appear within a period of one (1) year from date of final acceptance or within the period stipulated in certain separate guarantees or bonds required elsewhere in the specifications, whichever may be the longer.
- D. The Owner shall be the sole judge of the materials furnished and the character of work performed.

1.14 RESPONSIBILITY FOR DAMAGE

- A. The Contractor shall be responsible for all damages to life and property due to his action or failure to act when action would reasonably be expected. He shall be responsible for all parts of his work, both temporary and permanent, until the work under his contract is declared accepted by the Owner.
- B. The Contractor shall continuously maintain adequate protection of all his work from damage, and shall protect the Owner's property and all adjacent property from injury in connection with the Contract.
- C. The Contractor shall be held responsible for damage to work of other Contractors that is the result of his operation.
- D. Should the Contractor believe that the work shown by the drawings or specifications is not correct when executed to obtain safe and substantial results, or if any discrepancy appears, it is his duty to immediately notify the Owner in writing, stop work on same, and await written instruction.

1.15 INDIANA SALES TAX

- A. Indiana State University is a Tax Exempt Institution and Indiana Sales Tax for products permanently incorporated in work shall not be included as part of the Bid or on any Application for Payment.

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SUPPLEMENTARY GENERAL CONDITIONS

B. Contractor Responsibilities:

1. Pay Indiana Sales Tax on all non-exempt purchases and provide the Owner with detailed documentation of all taxes of non-exempt items invoiced on their Application for Payment. Documentation shall be provided with their Application for Payment at the time of first billing of each taxable item.
2. Upon completion of work, file with Owner notarized statement that all purchases were made under their exemption certificate where entitled to be exempt.
3. Pay legally assessed penalties for improper use of the exemption certificate number.

1.16 CLEANING UP

- A. The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish.
- B. When directed by the Owner, the Contractor shall clear out and remove any rubbish that may constitute an obstruction to the progress of the work.
- C. At completion of the contract, the Contractor shall remove from the premises all rubbish and surplus material, and shall repair any damage to his work no matter by who caused, and shall leave the premises clean and in perfect repair and order.

1.17 NON-DISCRIMINATION CLAUSE

- A. "Pursuant to the requirements of Indiana Code 22-9-1-10 and 5-16-6-1, Contractor and his Subcontractors may not discriminate against any employee or applicant for employment to be employed in the performance of such contract, with respect to their hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of their sex, race, natural origin, ancestry or religion or disability as prohibited under the Americans With Disabilities Act. The contractor and subcontractor, if any, agrees to comply with all the provisions contained in the Equal Opportunity Clause quoted in Executive Orders No. 11246 and No. 11375. In addition, the contractor shall cause this Equal Opportunity Clause to be included in the subcontracts or purchase orders hereunder unless exempted by rules, regulations and orders of the Secretary of Labor issued pursuant to Section 204 of the Executive Orders No. 11246 and No. 11375 as amended. Breach of the covenant may be regarded as a material breach of contract."

1.18 PUBLIC RELATIONS

- A. Indiana State University is an Affirmative Action Institution. Any inappropriate actions toward any Indiana State University student, faculty or staff member by any Contractor's Employee shall result in the employee being told to leave the Campus of Indiana State University immediately. This employee shall not be allowed to return to work on the Project for the duration of the Project or longer. Repeated offences by a Contractor's employees may result in disqualification of the Contractor for this and future Indiana State University Projects.

1.19 "OR APPROVED EQUAL" CLAUSE

- A. Unless the Specifications indicates that substitutions are not allowed, whenever a material or article required is specified or shown on the plans by using the name of the proprietary product or of a particular manufacturer or vendor, any material or article which will perform adequately the duties imposed by the general design will be considered equal and satisfactory providing the material or article so proposed is of equal substance and function in the Architect/Engineer and Owner's opinion. It shall not be purchased or installed without written approval. Requests for substitution prior to Bidding shall be as per Section 001010 INSTRUCTIONS TO BIDDERS Item 1.08
- B. Complete descriptive information, specifications and samples or sample material must be submitted at the time the proposal is submitted. In addition, a list of projects with dates and contact persons must be submitted at the time the proposal is submitted showing where the proposed alternate material or article has been installed or used. Failure to submit information as requested will be cause for rejection of the Bid submitted.

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SUPPLEMENTARY GENERAL CONDITIONS

1.20 VERIFYING MEASUREMENTS

- A. The Contractor shall verify all measurements on the site and be responsible for any mistakes he may make and their results. If the Contractor discovers any discrepancy, in figures on the drawings, he shall report same to the Architect/Engineer and Owner before proceeding with any work affected by the discrepancy and shall be held responsible for results should he fail to make such reports.

1.21 EXTRAS

- A. Without invalidating the Contract, the Owner may order extra work or make changes by altering, adding to, or deducting from the work, the Contract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirable. All work of the kind Bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the Owner, and the price is stated in such order.
- B. Requests for compensation, for previously approved Change Orders omitted from an Application for Payment, received sixty (60) calendar days after Owner receipt of the Final Application for Payment (Release of Retainage) shall not be honored.

1.22 GENERAL GUARANTY

- A. Neither the final certificate of payment nor any provision in the Contract documents nor partial or entire occupancy of the premises by the Owner shall constitute an acceptance of work not done in accordance with the Contract documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting there from, which shall appear within a period of one (1) year from the date of final acceptance of the work, unless a longer period is specified.

PART 2 – NOT USED

PART 3 – NOT USED

END OF SECTION 002020

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SUPPLEMENTARY GENERAL CONDITIONS

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ISU SPECIAL REQUIREMENTS AND INFORMATION

## PART 1 - SPECIAL REQUIREMENTS

## 1.01 BARRICADES

- A. ISU will provide barricades during the initial closure of a construction site. However, once the Contractor mobilizes, ISU will remove the barricades, and Contractor shall replace them with his own. If additional barricades are required during the construction phase, Contractors shall provide them at their expense.

## 1.02 BURIED UTILITIES

- A. All Direct Buried Utility Lines and Utility Duct Banks will be marked by use of the appropriate marker tape continuously installed a minimum of twelve (12) inches above said utility line or duct bank. Marker tape shall be a minimum of six (6) inches wide.

## 1.03 REMOVAL AND RE-INSTALLATION OF EQUIPMENT

- A. The Owner is not responsible for the removal or re-installation of any equipment necessitated by this work.
- B. All electrical disconnects and reconnects of equipment necessitated by this work shall be performed by a licensed bonded Electrical Contractor hired by the Contractor to perform this work. The Owner will assist in locating the power source but will not be responsible for the actual performance the electrical work.

## 1.04 PRIME CONTRACTOR RIGHT OF SALVAGE

- A. The Owner has the first right of salvage of any items not slated for re-use on every Project.
- B. Should the Owner waive their right for salvage for any item not slated for re-use or designated in Section 011510 for recycling; then these items become the property of the Prime Contractor.
- C. The Prime Contractor at their discretion may grant to others the right to salvage items not slated for re-use and this may be used to comply with the recycling requirements of Section 011510 as long as records are kept as defined in 011510.
- D. However; once an item has been placed in a dumpster or any other trash receptacle no one is allowed to enter a dumpster or search through a trash receptacle for the purpose of removing items for salvage while these trash containers are on the campus of Indiana State University.
- E. The Prime Contractor shall protect these trash containers by use of a six (6) foot high chain link fence enclosure around the trash container(s) to prevent any person from gaining access to the trash containers for actions prohibited by this item.

## 1.05 CERTIFICATE OF INDUSTRIAL BOARD

- A. The Contractor shall furnish a certificate of insurance from an insurance company acceptable to Indiana State University evidencing that the Contractor has complied with the Indiana Worker's Compensation Law.

## 1.06 CAMPUS TOBACCO POLICY

- A. Effective IN 2011 the following became the ISU smoking policy:
  - 1. The sale of tobacco products is prohibited on university-owned, operated, or leased property.
  - 2. The use of smoking tobacco products is prohibited on university-owned, operated, or leased property.
  - 3. The use of smoking tobacco products is permitted in privately owned vehicles and in designated smoking areas on campus.
  - 4. Any exceptions for the use of smoking tobacco products on university-owned, operated, or leased property must be approved by the President or Provost.

ISU SPECIAL REQUIREMENTS AND INFORMATION

5. Enforcement of this policy will depend on the cooperation of all faculty, staff, and students not only to comply with the policy, but also to encourage others to comply, in order to promote a healthy environment in which to work, study and live.
6. Observation of violation of the policy should be reported to Public Safety at 812-237-5555. Follow up for violations of the policy should be referred to the appropriate administrative office for review and action for faculty through the office of Academic Affairs, for staff through Human Resources and to the Dean of Students for students.

## B. Amendments to this policy for Contractors

1. Delete item 5 in its entirety and replace with the following:  
"Enforcement of this policy will depend on the cooperation of the Contractors and their employees to comply with the policy and encourage others to comply in order to promote a healthy environment in which to work".
2. Delete item 6 in its entirety and replace with the following:  
"Observation of violation of this policy should be reported to the Contractor's Project Superintendent and/or the Owner's Project Manager. Contractor's employees repeatedly violating this policy may be asked to leave the Campus of Indiana State University and not be allowed to continue work on the Project".
3. Add the following item 7:  
"For major construction or renovation Projects (as determined solely by the Owner) the Owner shall designate a Contractor's smoking area near or within the boundaries of the job-site; unless the Prime Contractor(s) chooses to declare the entire Project job-site as non-smoking. Under no circumstances shall smoking be permitted within a building under construction or renovation.

- C. Additionally on construction sites on university-owned, operated, or leased property the use of smokeless tobacco products is prohibited.

## 1.07 PARKING REGULATIONS

- A. Beginning in 2016, construction employees are required to park with a Construction Permit in Lot N at 11<sup>th</sup> and Chestnut Street, Lot O (7:00am-5:00pm) or Lot K both located at 1<sup>st</sup> and Chestnut Street when regular classes are in session. Contractors will be allowed to request an appropriate number of permits depending upon the project size for "core campus" parking. These permits should be used for carpooling or transporting employees to/from the construction and the construction parking lots. Contractors will also be allowed to have 2 foreman construction permits per project which will allow the foreman direct access to the construction project
- B. When regular classes are not in session (i.e. weekends, Fall Break, Winter Recess, and summer sessions [the Monday after commencement thru one week before move-in]) contractors and their employees will be allowed to park in any regular/open lot on campus with a construction permit unless the lot is reserved for an event.

## 1.08 ISU ENVIRONMENTAL CODE FOR CONTRACTORS

- A. Prior to starting any work, Contractor shall provide to the Owner a written document containing emergency procedures in case of:
  1. Liquid spills or leaks
  2. Release of gases or toxic vapors
  3. Excessive smoke
- B. This document shall contain but not be limited to:
  1. Emergency medical, fire, and police phone numbers including the ISU University Police.
  2. EPA phone numbers
  3. IDEM phone numbers



ISU SPECIAL REQUIREMENTS AND INFORMATION

4. Location of Material Safety Data Sheets.
- C. Prior to using any chemical or hazardous material the contractor shall provide the Owner with a copy of Material Data Safety Sheets covering the chemical or hazardous material.
  - D. Contractor shall not burn or bury waste material on campus, or discharge any hazardous, or undesirable materials to sewers, or release toxic materials to the air.
  - E. Contractor shall provide adequate exhaust ventilation for work area when generation of air contaminants is likely, i.e., painting, handling flammable liquids, welding, cutting, applying adhesives, etc.
  - F. Contractor shall have at the job site Material Safety Data Sheets (MSDS) covering all chemicals and hazardous materials to be used in the work area. MSDS are to be available to workers and ISU personnel during normal working hours. Contractor shall use proper procedures based on MSDS when handling hazardous chemicals and materials.
  - G. Contractor shall provide vacuum breakers or backflow preventers at each location where he utilizes building water supply.
  - H. Any Contractor employee who deliberately interferes with environmental monitoring shall be removed from the project immediately.
  - I. Contractor shall prevent fumes from welding, cutting, etc. and dust generated by construction from entering areas outside the work area by erecting plastic film barriers, sealing openings and ducts, and installing exhaust fans as required.
  - J. Air contaminants in the work area shall not exceed OSHA regulations.

## 1.09 ISU SAFETY CODE FOR CONTRACTORS

## A. General:

- 1. All work performed by contractors shall be done in accordance with all applicable Federal, State and Local laws, codes, and regulations and recommendations of Factory Mutual Engineering and Research (FM).
- 2. Any safety hazard or unsafe act recognized by the Owner shall be reported to the Contractor responsible for job coordination. The safety hazard shall be corrected in a timely manner dictated by the severity of the safety hazard or unsafe act.
- 3. Contractors shall remove all rubbish from the job site daily.
- 4. All construction materials shall be protected from wind damage. Materials shall be secured to prevent them from becoming airborne with subsequent injury to personnel or damage to property.

## B. Communication:

- 1. Contractor's job supervisors, or designated safety persons, must carry at all times a cellular phone to facilitate communication between the job site and the ISU University Police and Facilities Management Department. The cellular phones must remain on the job site during regular working hours. Contractor(s) shall report to the designated representative of ISU, or to ISU Police, any safety problem, code infraction, personal injury, or damage to ISU property. Report shall be made immediately after such occurrence.

## C. Fire Protection:

- 1. Contractors shall provide a type "ABC" fire extinguisher for each work crew.
- 2. Extinguishers are to be kept within easy reach of each work crew and never farther than 10 feet from some worker. Inspection tags on extinguishers shall indicate the date of last inspection.

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3. Contractor's supervisor shall keep torch cutting operations to a minimum by instructing personnel to use power saws, pipe cutters, etc. It shall be the duty and responsibility of the Contractor performing any cutting or welding to comply with the safety provisions of the National Fire Codes (NFC) pertaining to such work.
  4. Contractor shall adhere to Factory Mutual Engineering and Research (FM) "Cutting and Welding" permit system. Permits are available through the Office of Environmental Safety's Fire Specialist Office at 812-237-4020.
  5. Prime Contractor shall provide a one hour fire watch at the end of each workday when any cutting or welding occurred to assure that no possibility of fire exists from any work performed that day.
- D. Safety Program: Prior to starting any work the Contractor shall submit to ISU a written safety program for the project including but not limited to:
1. Occupational Health & Environmental Controls
    - a. Personal Protective Equipment
    - b. Fire Protection & Prevention
    - c. Hand & Power Tools
    - d. Ladders & Scaffolds
    - e. Motor Vehicles and Mechanized Equipment
    - f. Accident Prevention
    - g. Safety Inspections
    - h. OSHA Inspections
  2. Instruct all of his personnel as to location of emergency telephone(s).
  3. Instruct all his personnel as to location of fire alarm (pull) stations.
  4. Instruct all of his personnel to follow FM "Cutting and Welding Permit Systems" and emphasize the need to advise ISU's representative 24 hours prior to doing any welding, cutting, brazing, etc.
  5. Instruct all his personnel to advise ISU representative prior to doing any welding, cutting, or brazing on or near a roof structure.
  6. Instruct all personnel as to location on the job site of a copy of OSHA 29 CFR, Part 1926.
  7. Instruct all of his personnel as to location of first aid supplies.
- E. Flammable Storage:
1. Flammable or combustible liquids (paints, thinners, asphalt, gasoline, and tar or similar materials) shall be stored and handled as per NFPA 30, 4-5.5, and OSHA Construction Standard 1926.152. Quantities of flammable paints, etc., inside building work areas shall not exceed the amount to be used in one day.
  2. Containers of Class I liquids that are stored outside of an inside liquid storage area shall not exceed a capacity of 1 gallon, except safety cans shall be permitted up to 2 gallon capacity. Not more than 10 gallons of class I and class II liquids combined shall be stored in a single fire area outside of an approved storage cabinet or an inside liquid storage area unless in safety cans. Not more than 25 gallons of class I and class II liquids combined shall be stored in a single fire area in safety cans outside of an inside fluid storage area or an approved storage cabinet. Not more than 60 gallons of class IIIA liquids shall be stored outside of an inside liquid storage area or outside an approved storage cabinet.
  3. Rags saturated with flammable liquids shall be placed in approved cans and removed from the work site at the end of the work shift.
- F. Site Control: Contractor shall be responsible for securing the job site at all times and have personnel on call 24 hours per day for emergencies. Contractors shall protect their

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equipment and materials and ISU property from theft. Contractors shall secure doors, and openings including roof openings.

- G. Prior to a multiple day shutdown the Contractors shall:
  1. Remove all debris and leave the premises broom clean.
  2. Shut off all unnecessary electric power and water supplies.
  3. Remove all flammable liquids from the work site.
  4. Secure small tools in gang boxes.
  5. Leave drives open for emergencies.
- H. Temporary Electrical Service:
  1. Temporary electrical service shall be provided by a licensed, bonded electrical contractor.
  2. All extension cords shall be protected from abrasion and traffic. Multiple lengths of extension cord shall be connected with waterproof twistlock type connectors. Any electrical service over 115 volts shall be marked accordingly. All electrical power supplied from building service or portable generators shall have ground fault protection as part of the circuit.
  3. Portable generators or welders driven by internal combustion engines shall not be located inside the building. Positioning of this equipment outside the building shall be such that engine exhaust shall not enter the workplace or adjacent buildings.
- I. OSHA Reporting:
  1. Contractors shall complete an OSHA 106 form on all reportable occupational injuries and illnesses for each of their job locations on the ISU campus. This requires posting the information from the initial accident report on a master log (OSHA 200) form within six working days after the accident occurs. This form must be kept available for OSHA Compliance Safety and Health Office and ISU review.
  2. See OSHA Regulations 29 CFR Part 1904, "Recording and Reporting Occupational Injuries and Illnesses"

#### 1.10 FIRE SUPPRESSION SYSTEM REGULATIONS

- A. Prior to closing any fire suppression system valve or in any way making a fire suppression system inoperable the Contractor shall contact the Fire Specialist's Office at 812-237-4020 to obtain a FM Global Red Tag so the impairment to the system may be reported.
- B. When the work is complete the Contractor shall immediately contact the Fire Safety Specialist to report the work is complete so the red tag may be removed and FM Global notified that the system has been returned to normal operation.

#### 1.11 ELECTRICAL SAFETY REGULATIONS

- A. OSHA *Control of Hazardous Energy Lockout/Tagout Regulations* apply to all work performed on the Campus of Indiana State University. These Regulations are available for review on the OSHA Internet Website at <http://www.osha.gov/SLTC/controlhazardousenergy/index.html> . Any individual who removes another's lock or tag shall be ordered to leave Indiana State University and shall be disqualified from any future work at Indiana State University.
- B. High fault currents, in excess of 45kA, exist at certain points on electrical systems at Indiana State University. Employing Contractors shall make their employees working on campus electrical systems aware that this condition exists.
- C. No individual shall be permitted to install or service any energized circuit, equipment or apparatus where voltages greater than 100 volts to ground is present unless another individual is present.

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- D. No individual shall be permitted to operate or service any main or feeder main overcurrent protection device, whether group mounted or individually mounted, unless another individual is present.
- E. Deliberately shorting a branch circuit to ground to locate a branch feeder breaker is strictly prohibited.
- F. Any individual observed in violation of Regulations "C", "D" or "E" may be asked to immediately leave the workplace and/or their employer may be fined based on the following scale. Violations may apply to one or multiple employees.
- 1<sup>st</sup> violation                      Notice of Violation Warning Placed in Employing Firm's Work Record File
  - 2<sup>nd</sup> violation                      \$100.00
  - 3<sup>rd</sup> violation                      \$250.00
  - All subsequent violations      \$500.00 per incident
- G. **Repeated violations may be cause to disqualify the individual and/or employing firm from any other future work on the campus of Indiana State University.**

## 1.12 FIRE ALARM SYSTEM COORDINATION WITH PROJECT WORK

- A. An automatic fire detection system may in operation in areas of work. Prior to start of Work the Contractor shall verify with the Owner if devices are present in the Work area.
- B. Contractor shall coordinate with Owner for the shut down and reactivation of automatic fire detection devices in work areas based on the following procedures.
1. Prior to 3:30pm on the day before work is scheduled the Contractor shall contact either Pat Teeters at 812-237-8187 (Office) or 812-230-6141 (Cellular) to request fire alarm devices be disabled. If no answer, call Brad Welker at 812-237-8109 (alternate contacts). The Contractor shall provide exact work location, the time the devices are required to be disabled by and a means by which to contact the Contractor the next day, i.e. pager or cellular phone number. It is permissible to leave a "voice mail" of the required information.
  2. Prior to starting work the next day the Contractor shall contact Pat Teeters (preferred contact) or Brad Welker (alternate contact) to verify if the required devices are disabled. Please listen carefully to the voice mail announcement for information in the event of no answer.
  3. Prior to leaving the job-site at the end of workday or by 3:30pm the Contractor shall contact one of the aforementioned individuals to report clearance to reactivate the devices for the evening and what, if any, devices require disabling for the following workday.
- C. Failure to follow these procedures may result in fines being levied on the Contractor based on the following schedule.
- 1<sup>st</sup> failure to call and schedule in advance – Warning.
  - Any subsequent failure to call and schedule in advance – \$100.00 per occurrence
  - 1<sup>st</sup> failure to call resulting in activation of fire alarm system – Warning or \$100.00, dependent on situation as determined by the Owner.
  - Any subsequent failure to call resulting in activation of fire alarm system - \$100.00 per occurrence.

## 1.13 INSPECTION

- A. At the conclusion of the entire work encompassed in this contract, written notice requesting inspection shall be submitted to the Owner at least ten (10) days prior to the anticipated inspection date.

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## 1.14 PAYMENT AND FINAL ACCEPTANCE

## A. Anticipated Draw Schedule

1. For any Project in excess of \$500,000.00 the Contractor shall submit an anticipated monthly drawdown schedule.
2. This schedule shall be submitted within fourteen (14) calendar days after Award of Contract to:

Office of the Senior Vice President for Finance and Administration  
Rankin Hall Suite 210  
Terre Haute, IN 47809

## B. Applications for Payments shall be submitted on AIA Application for Payment form G702 with Continuation Sheet G703 (or on a form approved by the Owner). While no set date is required for Applications for Payment, the application shall be submitted on a regular monthly basis for labor and materials permanently installed in the work, for material stored on site and for properly insured materials stored off-site under the following conditions:

1. For purposes of making periodic estimates, the Contractor shall furnish an itemized breakdown of his contract amount, distributed according to different classes of work. In making application for payments, the Contractor shall show, each period, the percentages of completion of each class.
2. Contractor shall send five (5) copies for each Application for Payment.
3. The Owner will make partial payment to the Contractor on the basis of a duly certified, approved estimate of the work performed during the preceding calendar month by the Contractor within 15 days after receipt by the Owner.
4. Payment will be made on balance due on labor and materials installed permanently in the work to within 90% of estimated value, and not to exceed 90% of the value of materials delivered to the site which are not subject to damage by exposure to the elements.
5. Stored materials and equipment offsite: The Owner will make payment for materials and equipment store offsite under the following conditions.
  - a. The Contractor requests in writing to the Architect/Engineer/Owner for payment on offsite stored materials and equipment.
  - b. The Architect/Engineer/Owner is given access to the offsite storage facility for purposes of inspection and verification of the stored materials and equipment. Any material or equipment not properly stored or protected shall not be approved for payment.
  - c. The Contractor shall provide to the Architect/Engineer/Owner a current Certificate of Insurance on the remote storage facility. This insurance shall remain in force for the duration of the storage of the stored materials and equipment at the remote location.
6. The Owner, if conditions in its opinion warrant, has the right to withhold, in addition to retained percentages, such an amount or amounts from the payment to the Contractor as may be necessary to pay just unpaid claims for labor and services rendered and materials furnished in connection with the work.
7. The Owner will not approve for payment on any estimate, the value on any materials which, in his opinion, does not meet the contract requirements.
8. At the conclusion of installation and satisfactory inspection by the Owner, the work shall be acceptable for payment of an amount equal to ninety-five (95%) percent of the total contract amount.
9. Reduction or Limitation of Retainage:
  - a. At the sole written discretion of Indiana State University, if acceptable progress is made, at fifty percent (50%) completion of the Contract Sum the remaining Retainage may be reduced to 0%.

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- b. Any subsequent Change Orders after the reduction of Retainage shall have 5% Retainage withheld.
  10. **Requests for compensation, for previously approved Change Orders omitted from an Application for Payment, received sixty (60) calendar days after Owner receipt of the Final Application for Payment (Release of Retainage) shall not be honored.**
  11. Final payment will be due and payable the later of sixty-one (61) days from date of receipt of the Final Application for Payment or after the Contractor has completed all punch list items, certified that all Subcontractors and Suppliers have been paid, and all claims, including the Contractor's, have been resolved. Before issuance of the final payment, the Contractor shall furnish an affidavit (Final Waiver of Lien) as evidence that there are no claims on account of the Contract, outstanding liens of claims for materials furnished, or labor performed on the work. The final payment shall constitute the acceptance of the work by the Owner, except as to work thereafter found to be defective. The date of such payment shall be regarded as the date of final acceptance of the work.
  12. Warranty: The Warranty Period shall be per AIA A201-2007 Article 3 Paragraph 3.5 as amended by Specification Section 002011 Amendments to General Conditions.
- C. ACH Payments
1. In an effort to expedite Contractor payments Indiana State University requests the Contractor set up an ACH account for Project Payments.
  2. Contact the ISU Office of the Controller to set up this account.
  3. If the Contractor currently has an ACH Account with Indiana State University it is not necessary to set up an account for each Project. It is solely the responsibility to maintain accurate Banking information on file with the ISU Office of the Controller
- D. Special provisions regarding Retainage and Escrow:
1. The laws of the State of Indiana (IC 5-16-5.5-3 as amended) contain certain provisions regarding retainage, bonds and payment of Contractors and Subcontractors. The Contracts and Subcontracts entered into pursuant to these instructions to Bidders shall be governed by those provisions with respect to Contracts in excess of \$200,000 entered into between a Contractor and the Indiana State University Board of Trustees.
  2. These provisions require, among other things, that the amounts retained by the Owner from the contractor pursuant to retainage provisions be placed in an escrow agreement to be executed by the Contractor. Pursuant to these provisions, the successful Bidder shall be required to execute an escrow agreement between the Contractor and the Owner.
  3. This escrow agreement shall have no application to payment withheld by the Owner pursuant to provisions of the Construction Contract intended to protect the Owner from loss on account of defective work not remedied; claims filed on reasonable evidence; failure of the Contractor to make payments when due to subcontractors or for material or labor; reasonable doubt that the contract can be completed for the balance then unpaid; damage to another contract; failure or refusal of the Contractor to prosecute the work in strict compliance with the above process schedule; or similar provision.
  4. In addition, each successful Bidder will be required to comply with all applicable provisions of the statute referred to above with respect to each of his Subcontractors (as the term 'Subcontractor' is defined in the statute referred to above).
  5. The Contractor shall contact Kathy Abernathy in the Office of the Senior Vice President for Finance and Administration at (812)-237-3554 to set-up this escrow account
  6. Should a Contractor fail to execute an Escrow Agreement between the Contractor and the Owner (Indiana State University Board of Trustees) the Contractor waives all claims for any interest the Contractor would have accrued had an Escrow Agreement been executed.

ISU SPECIAL REQUIREMENTS AND INFORMATION

1.15 CONTRACTOR'S BID

- A. Contractor shall submit Bid for Base Bid and any Alternate Bids as listed in Section 002000.

1.16 INVOICING

- A. All invoices and/or Certificates of Payment must be addressed to:

Indiana State University  
Department of Facilities Management  
951 Sycamore Street  
Terre Haute, IN 47809  
Attention: Scott Tillman

**Do not sent Applications for Payment to the ISU Accounts Payable Office**

- B. A Partial Wavier of Lien shall be submitted with every Application for Payment until the final Application for Payment (Release of Retainage) when a Final Waiver of Lien shall be submitted.

1.17 SITE LOCATION(S)

- A. **510 N 6½ Walk, Terre Haute, IN 47809**

1.18 PROJECT CONTACT

- A. All questions regarding this Project shall be addressed to:

Scott Tillman  
Department of Facilities Management  
951 Sycamore Street  
Terre Haute, IN 47809  
Office 812-237-8198 Mobile 812-878-4251 E-mail [scott.tillman@indstate.edu](mailto:scott.tillman@indstate.edu)

PART 2 – NOT USED

PART 3 – NOT USED

END OF SECTION 003000

003000

ISU SPECIAL REQUIREMENTS AND INFORMATION

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024114  
SELECTIVE DEMOLITION

PART 1 – GENERAL

1.01 SECTION INCLUDES

- A. Removal of designated building equipment and fixtures.
- B. Removal of designated construction.
- C. Disposal or storage of removed materials.
- D. Identification of utilities.
- E. Refer to items as indicated.

1.02 SUBMITTALS FOR CLOSEOUT

- A. Project Record Documents: Accurately record actual locations of capped utilities and subsurface obstructions.

1.03 REGULATORY REQUIREMENTS

- A. Conform to applicable code for demolition work, safety of structure, dust control, products requiring electrical disconnection and re-connection.
- B. Obtain required permits from authorities.
- C. Do not close or obstruct egress width to any building or site exit.
- D. Do not disable or disrupt building fire or life safety systems without 3 days prior written notice to Owner.
- E. Conform to procedures applicable when hazardous or contaminated materials are discovered.

1.04 SCHEDULING

- A. Perform work between the hours of 7 a.m. and 4 p.m.

1.05 PROJECT CONDITIONS

- A. Conduct demolition to minimize interference with adjacent and occupied building areas.
- B. Cease operations immediately if structure appears to be in danger and notify Architect/Engineer. Do not resume operations until directed.
- C. Maintain protected egress and access to the Work.

PART 2 – NOT USED

PART 3 – EXECUTION

3.01 PREPARATION

- A. Provide, erect, and maintain temporary insulated partitions at required locations.
- B. Erect and maintain weatherproof closures for exterior openings.
- C. Erect and maintain temporary partitions to prevent spread of dust, odors, and noise to permit continued Owner occupancy.
- D. Protect existing materials which are not to be demolished.
- E. Prevent movement of structure; provide bracing and shoring.
- F. Notify affected utility companies before starting work and comply with their requirements.

024114  
SELECTIVE DEMOLITION

- G. Mark location and termination of utilities.
- H. Provide appropriate temporary signage including signage for exit or building egress.

3.02 DEMOLITION

- A. Disconnect, remove, cap, and identify designated utilities within demolition areas.
- B. Demolish in an orderly and careful manner. Protect existing supporting structural members.
- C. Remove demolished materials from site except where specifically noted otherwise. Do not burn or bury materials on site.
- D. Remove materials as Work progresses. Upon completion of Work, leave areas in clean condition.
- E. Remove temporary Work.

3.03 PROTECTION OF SALVAGED ITEMS

- A. Remove, store and protect the materials and equipment scheduled to be re-used.

END OF SECTION 024114

095113  
SUSPENDED ACOUSTICAL CEILINGS

PART 1 -GENERAL

1.01 SECTION INCLUDES

- A. Suspended metal grid ceiling system and perimeter trim.
- B. Acoustical tile and panels.
- C. Non-fire rated assembly.
- D. Supplementary acoustical insulation over system units.

1.02 REFERENCES

- A. ASTM C635 - Metal Suspension Systems for Acoustical Tile and Lay-in Panel Ceilings.
- B. ASTM C636 - Installation of Metal Ceiling Suspension Systems for Acoustical Tile and Lay-in Panels.
- C. ASTM E580 - Practice for Application of Ceiling Suspended Systems for Acoustical Tile and Lay-in panels in areas requiring seismic restraint.
- D. ASTM E1264 - Classification of Acoustical Ceiling Products.
- E. Ceilings and Interior Systems Contractors Association (CISCA) - Acoustical Ceilings: Use and Practice.

1.03 SUBMITTALS

- A. Submit under provisions of Section 013200.
- B. Shop Drawings: Indicate grid layout and related dimensioning, junctions with other work or ceiling finished, interrelation of mechanical and electrical items related to system and wall layouts.
- C. Product Data: Provide data on metal grid system components, acoustical units and accessories.
- D. Samples: Submit two samples full size illustrating material and finish of acoustical units.
- E. Samples: Submit two samples each, 12 inches (300 mm) long, of suspension system main runner, cross runner, edge trim, and hold down clips.
- F. Manufacturer's Installation Instructions: Indicate special procedures, perimeter conditions requiring special attention.

1.04 QUALIFICATIONS

- A. Grid Manufacturer: Company specializing in manufacturing the Products specified in this section with minimum three years documented experience.
- B. Acoustical Unit Manufacturer: Company specializing in manufacturing the Products specified in this section with minimum three years documented experience.

1.05 REGULATORY REQUIREMENTS

- A. Conform to applicable code for combustibility requirements for materials.

1.06 ENVIRONMENTAL REQUIREMENTS

- A. Maintain uniform temperature of minimum 60 degrees F (16 degrees C), and maximum humidity of 40 percent prior to, during, and after acoustical unit installation.

1.07 SEQUENCING

- A. Sequence work to ensure acoustical ceilings are not installed until building is enclosed, sufficient heat is provided, dust generating activities have terminated, and overhead work is completed, tested, and approved.
- B. Install acoustical units after interior wet work is dry.

095113  
SUSPENDED ACOUSTICAL CEILINGS

1.08 EXTRA MATERIALS

- A. Furnish under provisions of Section 017700.
- B. Provide 10 percent of total acoustical unit area of extra tile panels to Owner.

PART 2 – PRODUCTS

2.01 MANUFACTURERS - SUSPENSION SYSTEM

- A. Chicago Metallic Corp.
- B. Armstrong Contract Interiors.
- C. Donn by U.S.G. Interiors, Inc.

2.02 SUSPENSION SYSTEM MATERIALS

- A. Non-fire Rated Grid: ASTM C635, heavy duty; exposed T as indicated: components die cut and interlocking.
- B. Grid Materials: Commercial quality cold rolled steel with galvanized coating.
- C. Exposed Grid Surface Width: 15/16 inch (24 mm).
- D. Grid Finish: White and color as indicated.
- E. Accessories: Stabilizer bars clips splices edge moldings hold down clips and for suspended grid system.
- F. Support Channels and Hangers: Galvanized steel; size and type to suit application, seismic requirements, a ceiling system flatness requirement specified.

2.03 MANUFACTURERS - ACOUSTICAL UNITS

- A. U.S.G. Interiors, Inc. Product as schedule.
- B. Armstrong Contract Interiors Product as scheduled.
- C. Celotex Building Products Product as scheduled.

2.04 ACOUSTICAL UNIT MATERIALS

- A. Armstrong Type 737
  - 1. Recessed Angular Tegular
  - 2. Size: 24" x 24" x 5/8"
  - 3. Grid: 15/16" DX
  - 4. Color: White

2.05 ACCESSORIES

- A. Touch-up Paint: Type and color to match acoustical and grid units.

PART 3 – EXECUTION

3.01 EXAMINATION

- A. Verify site conditions.
- B. Verify that layout of hangers will not interfere with other work.

3.02 INSTALLATION - LAY IN GRID SUSPENSION SYSTEM

- A. Install suspension system in accordance with manufacturer's instructions and as supplemented in this section.
- B. Install system in accordance with ASTM E580.

SUSPENDED ACOUSTICAL CEILINGS

- C. Install system capable of supporting imposed loads to a deflection of 1/240 maximum.
- D. Lay out system as indicated on reflected ceiling plans.
- E. Supply hangers or inserts for installation with instructions for their correct placement.
- F. Install after major above ceiling work is complete. Coordinate the location of hangers with other work.
- G. Provide hanger clips during steel deck erection. Provide additional hangers and inserts as required.
- H. Hang suspension system independent of walls, columns, ducts, pipes and conduit. Where carrying members are spliced, avoid visible displacement of face plane of adjacent members.
- I. Where ducts or other equipment prevent the regular spacing of hangers, reinforce the nearest affected hangers and related carrying channels to span the extra distance.
- J. Do not support components on main runners or cross runners if weight causes total dead load to exceed deflection capability. Support fixture loads by supplementary hangers located within 6 inches (150 mm) of each corner; and support components independently.
- K. Do not eccentrically load system, or produce rotation of runners.
- L. Install edge molding at intersection of ceiling and vertical surfaces, using longest practical lengths. Miter corners. Provide edge moldings at junctions with other interruptions.
- M. Form expansion joints as required. Maintain visual closure.

## 3.03 INSTALLATION - CONCEALED GRID SUSPENSION SYSTEM

- A. Install suspension system in accordance with manufacturer's instructions and as supplemented in this section.
- B. Install system in accordance with ASTM E580.
- C. Install system capable of supporting imposed loads to a deflection of 1/240 maximum.
- D. Lay out system to a balanced grid design as indicated on reflected ceiling plans and/or electrical lighting plans.
- E. Install after major above ceiling work is complete. Coordinate the location of hangers with other work.
- F. Supply hangers or inserts for installation with instructions for their correct placement.
- G. Provide hanger clips during steel deck erection. Provide additional hangers and inserts as required.
- H. Hang suspension system independent of walls, columns, ducts, pipes and conduit. Where carrying members are spliced, avoid visible displacement of face plane of adjacent members.
- I. Where ducts or other equipment prevent the regular spacing of hangers, reinforce the nearest affected hangers and related carrying channels to span the extra distance.
- J. Do not support components on main runners or cross runners if weight causes total dead load to exceed deflection capability. Support fixture loads by supplementary hangers located with 6 inches (150 mm) of each corner; and support components independently.
- K. Do not eccentrically load system, or produce rotation of runners.
- L. Install edge molding at intersection of ceiling and vertical surfaces, using longest practical lengths. Miter corners. Provide edge moldings at junctions with other interruptions.
- M. Form expansion joints as required. Maintain visual closure.

095113  
SUSPENDED ACOUSTICAL CEILINGS

3.04 INSTALLATION - ACOUSTICAL UNITS

- A. Install acoustical units in accordance with manufacturer's instructions.
- B. Fit acoustical units in place, free from damaged edges or other defects detrimental to appearance and function.
- C. Lay directional patterned units one way with pattern parallel to shortest room axis. Fit border trim neatly against abutting surfaces.
- D. Install units after above ceiling work is complete.
- E. Install acoustical units level, in uniform plane, and free from twist, warp and dents.
- F. Cut tile panels to fit irregular grid and perimeter edge trim. Field rabbett tile panel edge. Double cut and field paint exposed edges of tegular units.
- G. Where bullnose concrete block corners round obstructions occur, provide preformed closers to match edge molding.
- H. Lay acoustical insulation for a distance of 48 inches (1 200 mm) either side of acoustical partitions.
- I. Install hold-down clips to retain panels tight to grid system within 20 ft (6 m) of an exterior door.

3.05 ERECTION TOLERANCES

- A. Maximum Variation from Flat and Level Surface: 1/8 inch in 10 feet (3 mm in 3 m).
- B. Maximum Variation from Plumb Grid Members Caused by Eccentric Loads: 2 degrees.

END OF SECTION 095113

096521  
RESILIENT TILE FLOORING (MOHAWK PLANK)

PART 1 – GENERAL

1.01 DESCRIPTION

A. Work Included: Resilient tile flooring required for this work is indicated on the Finish Schedule in the Drawings and includes:

1. Mohawk LVT Hot and Heavy Collection
2. Flexible base

1.02 QUALITY ASSURANCE

A. Manufacturer's Recommendations: The manufacturer's recommended methods of installation, when approved by the Architect, shall be the basis of acceptance or rejection of actual installation methods used on this work.

1.03 SUBMITTALS

- A. Submit color samples of the flexible base to the Architect for approval and selection.
- B. Submit color samples of the tile to the Architect for approval and selection. Each sample shall include two pieces, showing the extreme ranges of color.
- C. Accompanying the samples, submit two copies of the manufacturer's current recommended method of installation for each item.

1.04 PRODUCT DELIVERY, STORAGE & HANDLING

A. Store all materials off the ground under watertight cover and away from sweating walls and other damp surfaces until ready for use. All rooms, subfloors, tiles and adhesives shall be maintained at a minimum temperature of 70 degrees F. for at least 48 hours before commencing work. Temperature shall be maintained during installation and for at least 48 hours after completion. Remove damaged or deteriorated material from the premises.

1.05 PROTECTION

A. Protect finished work installed by other trades prior to work under this Section. Any work damaged by workers of this trade shall be replaced without cost to the Owner.

PART 2 - PRODUCTS

2.01 MANUFACTURER

A. Mohawk Hot and Heavy Collection Style Grown Up (C00075) Brand Mohawk Group - Hard Surface Product Type Loose Lay Luxury Vinyl Tile. Color as determined by Architect

2.02 DESIGN

- A. Size 9" x 59"
- B. Overall Gauge .20" (5mm)
- C. Wear Layer 20 mil (0.5mm)
- D. Finish M-Force™ Enhanced Urethane
- E. Texture Registered Emboss
- F. Colors Available 10
- G. Installation Perimeter Glue
- H. Recommended Adhesive Perimeter glue only with MS160 Spray. May also use M95.0 Resilient Flooring Adhesive

2.03

RESILIENT TILE FLOORING (MOHAWK PLANK)

## PERFORMANCE

- A. Construction Commercial Grade Floating Luxury Vinyl Tile
- B. Classification ASTM F-1700 - Class III, Type A - Smooth, Type B - Embossed
- C. Squareness ASTM F2055 - Passes - 0.010 in. max
- D. Size and Tolerance ASTM F2055 - Passes -  $\pm 0.016$  in. per linear foot
- E. Thickness ASTM F386 - Passes - Nominal  $\pm 0.005$  in.
- F. Flexibility ASTM F137 - Passes -  $\leq 1.0$  in., no cracks or breaks
- G. Dimensional Stability ASTM F2199 - Passes -  $\leq 0.024$  in. per linear foot
- H. Static Load Limit ASTM F970 - Passes - modifies - 1000 psi Residual Indentation ASTM F1914 - Passes - Average less than 8%
- I. Slip Resistance ASTM D2047 - Passes -  $> 0.6$  Wet, 0.6 Dry
- J. Resistance to Chemicals ASTM F925 - Passes - No Change or Slight Change
- K. Resistance to Light ASTM F1515 - Passes -  $\Delta E \leq 8$
- L. Resistance to Heat ASTM F1514 - Passes -  $\Delta E \leq 8$
- M. Critical Radiant Flux ASTM E648 - Passes -  $\geq 0.45$  watts/cm<sup>2</sup>, Class 1
- N. IIC Rating 57 (over 6" concrete and drop ceiling)

## 2.04 SUSTAINABILITY

- A. Certification FloorScore® Certified
- B. Renewable Resource Content Minimum of 8% bio-based rapidly renewable resource content by total product weight

## 2.05 SERVICE

- A. Warranty Limited 10 Year Commercial

## 2.06 FLEXIBLE BASE (If required for installation)

- A. General: All flexible base shall be the product of one manufacturer and shall be coved in all areas receiving.
- B. Work Included: Furnish and install flexible base around walls, columns, casework, equipment, and similar built-in items by other as shown on the Room Finish Schedule. Do not install flexible base behind such built-in items, unless the backs of such items will be exposed in the completed work.
- C. Materials:
  1. Flexible base shall be 1/8" thick X height as shown on the drawings, solid rubber or vinyl with ribbed backs and smooth faces. Base shall conform to Federal Specifications SS-W-40a.
  2. Pre-formed end stops shall be 1/8" thick X heights required by the size of the base, solid rubber or vinyl to match base.
  3. Standards: Armstrong, VPI



RESILIENT TILE FLOORING (MOHAWK PLANK)

## 2.07 OTHER MATERIALS (If required for installation)

- A. Edge Strips shall be 1/8" thick x 1" wide, lengths as required and factory-waxed. One long edge shall be square edged and the other long edge shall be beveled.
  - 1. Vinyl composition shall conform to Federal Specifications SS-T-312 Type IV.
- B. Provide Transition Moldings by Mercer. Verify with the Architect prior to installation.

## PART 3 - EXECUTION

## 3.01 SURFACE CONDITIONS

- A. Inspection:
  - 1. Prior to all work of this section, carefully inspect the installed work of other trades to the point where walls, subfloors, ceilings and other similar work occurring within the areas to receive resilient tile flooring are completely installed and finished before work described in this section can begin.
  - 2. Verify that resilient tile flooring may be installed in accordance with the original design and the manufacturer's recommendations.
  - 3. Commencement of the work in this section shall mean acceptance of the subfloor by the installer.
  - 4. In the event of discrepancy or unacceptable surface conditions, immediately notify the Architect.
  - 5. Do not proceed with installation in areas of discrepancy until all such discrepancies have been fully resolved.

## 3.02 PREPARATION

- A. The room shall be kept at a temperature of not less than 65 degrees F. for at least 24 hours before, after, and during installation.
- B. All materials shall be stored for a period of not less than 24 hours in an area that ambient temperature of which is not less than 70 degrees F.
- C. Subfloors: Neatly patch, fill, or otherwise repair all cracks, marks, irregularities, and other conditions in the subfloor that may telegraph through the finished installation and so that they will properly bond with the concrete subfloors.
- D. Remove all paint from the subfloor to assure permanent bond of the sheet flooring to the subfloor. Obtain an inspection from the manufacturer's representative to approve the condition of the subfloor to receive the sheet flooring prior to installation.

## 3.03 INSTALLATION OF FLOORING

- A. Installation shall be per manufacturer's recommendations or has specified by the Architect.
- B. Layout shall be established using industry standards for this type of installation.

## 3.04 INSTALLATION FOR FLEXIBLE BASE

- A. After preparation of wall surfaces, apply adhesive to back of base, leaving top 1/4" free of adhesive. Press base firmly against the walls sliding horizontally into place, making sure toe is tight to the floor and against the wall. Roll the entire surface of the base with a hand roller and press the top of the base against the wall with a straight edge. Remove excess adhesive immediately. Install preformed corners at all outside corners. Cope at internal corners. Where base terminates at projections, install end-caps.

RESILIENT TILE FLOORING (MOHAWK PLANK)

3.05 CLEANING AND PROTECTION

A. Cleaning

1. Upon completion of the installation, immediately remove all surplus adhesive from adjacent surfaces.
2. As soon as possible after installation, and in accordance with the timing recommended by the manufacturers, clean the entire resilient tile flooring surface using the materials recommended for that purpose by the manufacturers of the materials being cleaned.

3.06 EXTRA MATERIAL

- A. Provide the Owner with the following extra materials for use in maintenance work:
1. Deliver to the Owner unused remaining vinyl tile & base.

END OF SECTION 096521

096813  
CARPET - CARPET SQUARES

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Carpet squares with adhesive back.
- B. Accessories

1.02 REFERENCES

- A. ASTM D2859 - Test method for flammability of finished textile floor covering materials.
- B. ASTM E84 - Surface burning characteristics of building materials.
- C. ASTM E648 - Critical Radiant flux of floor covering systems using a radiant heat energy source.
- D. NFPA 253 - Test for critical radiant flux of floor covering systems.

1.03 SUBMITTALS

- A. Submit under provisions of Section 013200.
- B. Shop Drawings: Indicate seaming plan, method of joining seams, direction of carpet.
- C. Product Data; Provide data on specified products, describing physical and performance characteristics; sizes, patterns, colors available, and method of installation, and layout of flat wire system.
- D. Samples: Submit two samples 18 x 18 inch (450 x 450 mm) in size illustrating color and pattern for each carpet material specified.
- E. Submit two, 12 inch (300 mm) long samples of edge strip, material for each color specified.
- F. Manufacturer's Installation Instructions: Indicate special procedures, perimeter conditions requiring special attention.

1.04 QUALIFICATIONS

- A. Manufacturer: Company specializing in manufacturing specified carpet with minimum three years documented experience.
- B. Installer: Company specializing in installing carpet with minimum three years documented experience.

1.05 REGULATORY REQUIREMENTS

- A. Conform to applicable code for flame/smoke rating requirements in accordance with ASTM E84.
- B. Conform to NFPA 253, ASTM E648, Class I for flooring radiant panel test.
- C. Conform to ASTM D2859 for surface flammability ignition test.

1.06 ENVIRONMENTAL REQUIREMENTS

- A. Store materials for 3 days prior to installation in area of installation to achieve temperature stability.
- B. Maintain minimum 70 degrees F (21 degrees C) ambient temperature 3 days prior to, during and 24 hours after installation.

1.07 MAINTENANCE DATA

- A. Submit under provisions of Section 017700.
- B. Maintenance Data: Include maintenance procedures, recommended maintenance materials, and suggested schedule for cleaning.

096813  
CARPET - CARPET SQUARES

1.08 EXTRA MATERIAL

- A. Furnish under provisions of Section 017700.
- B. Provide 10% extra of carpet squares, but not less than 8, of each type, color, and pattern specified.

PART 2 – PRODUCTS

2.01 ACCEPTABLE MANUFACTURERS – CARPET SQUARES

- A. Mohawk
- B. Shaw
- C. Milliken
- D. All others must submit for approval

2.02 MATERIALS - CARPET

- A. Refer to the Room Finish Schedule for Carpet Material for this Project

2.03 ACCESSORIES

- A. Sub-Floor Filler: White premix latex; type recommended by adhesive material manufacturer.
- B. "Pressure Sensitive Adhesive" designed for use with carpet squares

PART 3 - EXECUTION

3.01 EXAMINATION

- A. Verify that surfaces are smooth and flat with maximum variation of ¼ inch in 10 ft. (6 mm in 3 m), and are ready to receive work.
- B. Verify concrete floors are dry to a maximum moisture content of 7 percent; and exhibit negative alkalinity, carbonization, or dusting.

3.02 PREPARATION

- A. Vacuum clean substrate.
- B. Remove sub-floor ridges and bumps. Fill minor or local low spots, cracks, joints, holes, and other defects with sub-floor filler.
- C. Prime any patched areas, dirty, dusty or porous floors with a latex milk additive such as Parachem 615 or 620.

3.03 ADHESIVE APPLICATION

- A. Adhesive must be used in a full spread application
- B. Apply with a 1/16 x 1/16 x 1/16 square notched trowel. Do not apply with a paint roller.
- C. Allow adhesive to dry to a clear and tacky state before laying carpet squares.

3.04 INSTALLATION

- A. Install carpet squares per Manufacturer's instructions.
- B. Install tiles immediately after adhesive has dried
- C. Lay carpet squares tight and flat on subfloor.
- D. Fit carpet squares tight to intersection with vertical surfaces without gaps.
- E. Where wall bases are scheduled, cut carpet squares tight to walls.
- F. Fit carpet squares tight to vertical surfaces to form base.
- G. Carpet squares shall be installed in a quarter turn configuration.

096813  
CARPET - CARPET SQUARES

3.05 CLEANING

- A. Clean work under provisions of 017700.
- B. Remove excess adhesives without damage, from floor, base, and wall surfaces.
- C. Clean and vacuum carpet surfaces.

END OF SECTION 096813

096813  
CARPET - CARPET SQUARES

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099010  
GENERAL PAINTING REQUIREMENTS

PART 1 – GENERAL

1.01 DESCRIPTION

- A. Includes But Not Limited To-
  - 1. Finishing elements of the building shown on attached Finish Schedule or specified below.
  - 2. Back prime work to be installed against concrete or masonry or subjected to moisture.
  - 3. Paint mechanical and electrical items located in classrooms as determined by Owner.
- B. Related Documents-
  - 1. Documents affecting work of this Section include, but are not necessarily limited to, General Conditions, Supplementary Conditions, and Section in Division 01, General Requirements, of these Specifications.

1.02 DESCRIPTION OF SYSTEMS:

- A. It is the intent of this Specification to require all existing painted wall surfaces, except those explicitly exempted herein, to be painted under this contract.

1.03 SUBMITTALS

- A. Product Data-
  - 1. Written list of specific products proposed along with Manufacturer's certification that products meet specified requirements.
    - a. Data shall be specific as to Manufacturer's brand name and identifying numbers.
    - b. Indicate square footage to be covered by each product, Manufacturer's recommended coverage rates, and amount of product required based on average coverage.
    - c. Indicate items to be finished as work of each painting Section.
    - d. Outline, preparation and application procedures to be followed including application methods, time between coats, and environment
    - e. Provide Manufacturer's cut sheets which indicate paint components. As a minimum, specification requirements for paint composition shall be given on cut sheets submitted.
  - 2. Color selection data.
  - 3. Maintenance instructions.
- B. Samples-
  - 1. Provide paint card for each color and for each paint system. Card to show each component of system as well as total system.

1.04 QUALITY ASSURANCE

- A. Pre-installation Meeting-
  - 1. Schedule meeting after delivery of paint but prior to application of field samples or paint.
- B. Field Samples-
  - 1. Prior to application of any paint system meet on Project site with Owner's representative. Owner may select one surface for application of each paint system specified.
  - 2. Apply paint systems to surfaces indicated following procedures outlined in Contract Documents and Product Data submission specified above.
  - 3. After approval of samples, proceed with application of paint system throughout Project.

GENERAL PAINTING REQUIREMENTS

- C. Applicator shall have experience in application of specified products for five years minimum and be acceptable to Owner and Manufacturer.

## 1.05 DELIVERY, STORAGE, &amp; HANDLING

- A. Deliver specified products in original containers with labels intact on each container. Deliver amount of material indicated on submittal for Project in single shipment. Notify Owner two working days prior to delivery.
- B. Store materials in single place.
- C. Keep storage area clean and rectify any damage to area at completion of work of this Section.

## 1.06 PROJECT/SITE CONDITIONS

- A. Environmental Conditions-
  - 1. Maintain temperature of paint storage area at 55 deg. F minimum.
  - 2. Perform painting operations at temperature conditions recommended by Manufacturer for each operation.

## 1.07 SCHEDULING

- A. Coordinate by room painting schedules with Owner.
- B. Examine Contract Documents for painting requirements of other trades. Become familiar with their painting provisions and the painting of finish surfaces left unfinished by the requirements of other Sections.
- C. Contractor may work in facilities during normal hours of 6 a.m. to 6 p.m., or with approval of Owner after 6 p.m.

## 1.08 MAINTENANCE

- A. Extra Materials-
  - 1. Provide one gallon of each finish coat material in Manufacturer's original container in each color used. Provide one gallon of each primer and of each undercoat in each color used.

## PART TWO – PRODUCTS

## 2.01 MATERIALS

- A. Linseed oil, shellac, turpentine, and other painting materials shall be pure, of highest quality, and bear identifying labels on containers.
- B. Tinting color shall be best grade of type recommended by Manufacturer of paint or stain used on Project.
- C. Paint compositions shall not only meet specified requirements but also contain sufficient miscellaneous components to promote proper drying and performance during and after application.

## PART THREE – EXECUTION

## 3.01 INSPECTION

- A. Prior to installation of work of this Section, inspect classrooms to verify that space is ready for commencing painting.
- B. If inspection reveals deficiencies in work areas such that painting cannot be successfully completed, for not proceed with work of this Section in area of deficiency until resolved.
- C. Starting painting work will be construed as acceptance of surfaces and conditions within any particular area.



099010  
GENERAL PAINTING REQUIREMENTS

3.02 PREPERATION

A. Protection-

1. Remove all oily rags and waste from building each night. Take every precaution to avoid danger of fire.
2. Protect finish work and adjacent materials during painting.
3. Good painting practice excludes splattering, dripping or painting any surfaces not intended to be painted. These items will not be spelled out in detail but pay special attention to the following-
  - a. Do not paint finish copper, bronze, chromium plate, nickel, stainless steel, anodized aluminum, or monel metal except as explicitly specified.
  - b. Keep cones of ceiling speakers completely free of paint. If it is required that metal speaker grilles are to be painted, paint prior to mounting grilles to speakers. Mask of metal grilles installed on ceiling speakers if ceiling is being spray painted.

B. General Surface Preparation-

1. Surfaces to be painted shall be clean and free of loose dirt. Clean and dust surfaces before painting or finishing.
2. Do no exterior painting while surface is damp, unless recommended by Manufacturer, nor during rainy or frosty weather. Interior surfaces shall be dry before painting.
3. Apply barrier coats over incompatible primers.
4. Remove hardware, electrical device covers, lighting fixtures, and similar in place work or provide surface applied protection prior to surface preparation and painting. After completion of painting, reinstall any removed work.
5. Fill holes and cracks in surfaces to receive paint or stain.

C. Metal Surfaces-

1. Wash metal surfaces with mineral spirits to remove dirt and grease before applying materials.
2. Where rust or scale is present, use wire brush or sandpaper to clean before painting.
3. Clean shop coats of paint that have become marred and touch up with proper type primer.
4. Treat galvanized metal and zinc surfaces as specified and in accordance with Manufacturer's directions before applying first paint coat.

D. Wood Surfaces-

1. Sand woodwork smooth with 220 sandpaper and clean surfaces before proceeding with stain or first coat application.
2. Use fine sandpaper between coats to produce smooth, even surfaces.

E. Cementitious & Masonry Surfaces-

1. Clean to remove efflorescence, chalk, dust, dirt, grease, oils, and the like.
2. Roughen where required to remove glaze.
3. Clean concrete floors with etching cleaner and flush with clean water.
4. Pay particular attention to the paint manufacturer's preparation instructions.
5. Except for steam cured products, allow surfaces to cure from 30 to 90 days according to manufacturer's recommendations before painting.

GENERAL PAINTING REQUIREMENTS

## 3.03 APPLICATION

- A. Carefully follow Specifications and color schedule, painting complete all surfaces to be painted.
- B. Spread materials smoothly and evenly.
- C. Putty nail holes in wood after application of first finish coat using natural colored type to match wood finish. Bring putty flush with adjoining surfaces.
- D. Finished work shall be uniform, of approved color, smooth, and free from runs, sags, defective brushing, rolling, clogging, and excessive flooding.
- E. Read color schedule for rooms before priming walls. Tint priming coat and undercoat to approximate shade of final coat, but with enough difference so it is possible to check application of specified number of coats.
- F. Touch up suction spots after application of first coat.
- G. Use fine sandpaper between coats as necessary to produce even, smooth surfaces.
- H. Paint shall be thoroughly dry and surfaces clean before applying succeeding coats.
- I. Make edges of paint adjoining other materials or colors clean, sharp, and without overlapping.

## 3.04 ADJUSTMENT

- A. At completion of Project, touch up work to match specified finish. Repaint are damaged during construction with specified finish at no additional cost to Owner.

## 3.05 CLEANING

- A. Do not discard paint containers without Owner's written approval to allow count to determine if paint delivered was applied.
- B. Upon completion of work of this Section, remove paint spots from floors, walls, glass, or other surfaces and leave work clean, orderly, and in acceptable condition. Remove debris caused by work of this Section from premises.

END OF SECTION 099010