

DIVISION 0
CONDITIONS OF THE CONTRACT

BUSHEY FEIGHT MORIN ARCHITECTS INC.
473 NORTH POTOMAC STREET
HAGERSTOWN, MARYLAND 21740
301-733-5600 FAX: 301-733-5612

SECTION 0010

DIRECTORY

DIRECTORY

OWNER

SHEPHERD UNIVERSITY
SHEPHERDSTOWN, WEST VIRGINIA 25443
Telephone: (304) 876-5236
Fax: (304) 876-5316

CONTACT: Don Nuckols, Director of Facilities
Tom Crampton, Project Manager

ARCHITECT

BUSHEY FEIGHT MORIN ARCHITECTS INC.
473 NORTH POTOMAC STREET
HAGERSTOWN, MARYLAND 21740
Telephone: (301) 733-5600
Fax: (301) 733-5612

CONTACT: Aaron House, A.I.A., Senior Project Architect

SECTION 00050

INVITATION TO BID

INVITATION TO BID

Shepherd University invites bids to provide all Work, including but not limited to labor, material, equipment supplies and transportation for:

Shepherd University
Student Center
Window & Door Replacement
Shepherdstown, West Virginia
Request No. P005400

All Bids must be submitted in accordance with the Bidding Documents issued by the Architect, Bushey Feight Morin Architects Inc., 473 North Potomac Street, Hagerstown, MD 21740 (301) 733-5600 and the Request for Quotations. Bidding Documents may be obtained beginning January 20, 2015 from:

BUSHEY FEIGHT MORIN ARCHITECTS INC.
473 North Potomac Street
Hagerstown, Maryland 21740
(301) 733-5600

The cost of each set of Bid Documents is \$35.00 per compact disc plus shipping and handling costs (when required). Checks need to be made to the order of Shepherd University. No refunds will be provided.

A pre-bid meeting is scheduled for:

Time: January 28, 2015 @ 11:00 AM (local time)
Place: Student Center – Cumberland Room

Construction Time: The project Contract time is anticipated to begin with a Notice to Proceed on or before February 20, 2015. Upon Notice to Proceed and prior to May 11, 2015, Contractor may be on site by appointment only and no demolition or construction or other disruptive activity, nor any staging, will occur on site. This period is exclusively for ordering / purchasing materials for the project.

On premises activity for The Work may begin on May 11, 2015. Substantial Completion Date is August 7, 2015. The Contract definition of Substantial Completion is supplemented to include: In addition to all other criteria for Substantial Completion provided for in the Contract, Substantial Completion shall include Work sufficiently completed to permit complete and uninterrupted re-occupancy by Owner of all administrative offices. Final Completion shall be no later than August 14, 2015.

Attendance is:

- () MANDATORY: If pre-bid is mandatory, all Bidders MUST attend the pre-bid meeting to familiarize themselves with the Project location, site conditions and other relevant information. Should any Bidder fail to attend, the Bid will be disqualified.
- (X) RECOMMENDED: If pre-bid is Recommended, all Bidders should attend the pre-bid meeting to familiarize themselves with the Project location, site conditions and other relevant information. Should any Bidder fail to attend there will be no adjustment in the Contract Sum because of this.

Sealed Bids will be received by the OWNER at the following location until 3:00 PM local time, on February 11, 2015 in accordance with the Instructions to Bidders, the Supplementary Instructions to Bidders and Request for Bids:

Shepherd University
Executive Director of Purchasing
Ikenberry Hall, Room 217
Shepherd University
Shepherdstown, WV 25443-3210

Bids will be opened and read aloud in Ikenberry Hall, Room 202 following submission of sealed bids.

END OF INVITATION TO BID

Shepherd University encourages Small, Disadvantaged, Minority or Women Owned Businesses to Bid.

SECTION 00100
AIA A701 - 1997
INSTRUCTIONS TO BIDDERS



Document A701™ – 1997

Instructions to Bidders

for the following PROJECT:

(Name and location or address)

Student Center Window and Door Replacement
Shepherd University
Shepherdstown, West Virginia
BFM Project No. 14104

THE OWNER:

(Name, legal status and address)

Shepherd University
P. O. Box 5000
Shepherdstown, WV 25443-5000

THE ARCHITECT:

(Name, legal status and address)

Bushey Feight Morin Architects Inc.
473 North Potomac Street
Hagerstown, Maryland 21740

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- 8 **FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

ARTICLE 1 DEFINITIONS

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

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

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

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

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

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

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

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

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

ARTICLE 2 BIDDER'S REPRESENTATIONS

§ 2.1 The Bidder by making a Bid represents that:

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

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

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

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

ARTICLE 3 BIDDING DOCUMENTS

§ 3.1 COPIES

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

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

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

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

§ 3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

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

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

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

§ 3.3 SUBSTITUTIONS

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

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

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

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

§ 3.4 ADDENDA

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

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

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

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

ARTICLE 4 BIDDING PROCEDURES

§ 4.1 PREPARATION OF BIDS

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

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

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

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

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

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

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

§ 4.2 BID SECURITY

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

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

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

§ 4.3 SUBMISSION OF BIDS

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

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

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

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

§ 4.4 MODIFICATION OR WITHDRAWAL OF BID

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

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

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

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

ARTICLE 5 CONSIDERATION OF BIDS

§ 5.1 OPENING OF BIDS

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

§ 5.2 REJECTION OF BIDS

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

§ 5.3 ACCEPTANCE OF BID (AWARD)

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

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

ARTICLE 6 POST-BID INFORMATION

§ 6.1 CONTRACTOR'S QUALIFICATION STATEMENT

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

§ 6.2 OWNER'S FINANCIAL CAPABILITY

The Owner shall, at the request of the Bidder to whom award of a Contract is under consideration and no later than seven days prior to the expiration of the time for withdrawal of Bids, furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Unless such reasonable evidence is furnished, the Bidder will not be required to execute the Agreement between the Owner and Contractor.

§ 6.3 SUBMITTALS

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

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

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

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

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

ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

§ 7.1 BOND REQUIREMENTS

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

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

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

§ 7.2 TIME OF DELIVERY AND FORM OF BONDS

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

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

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

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

ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

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

Additions and Deletions Report for AIA[®] Document A701[™] – 1997

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:21:49 on 12/16/2014.

PAGE 1

Student Center Window and Door Replacement
Shepherd University
Shepherdstown, West Virginia
BFM Project No. 14104

...

(Name, legal status and address)
Shepherd University
P. O. Box 5000
Shepherdstown, WV 25443-5000

...

(Name, legal status and address)
Bushey Feight Morin Architects Inc.
473 North Potomac Street
Hagerstown, Maryland 21740

Certification of Document's Authenticity
AIA® Document D401™ – 2003

I, Linda L. Deibert, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:21:49 on 12/16/2014 under Order No. 5226302413_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A701™ – 1997, Instructions to Bidders, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

SECTION 00150

**STATE OF WEST VIRGINIA
SUPPLEMENTARY CONDITIONS TO
AIA DOCUMENT A701-1997**

State of West Virginia

Supplementary Instructions to Bidders for AIA Document A701-1997

The following supplements modify, change, delete from or add to the Instructions to Bidders, AIA Document A 701, 1997 Edition. Where any Article, Paragraph, Subparagraph, or Clause of the Instructions to Bidders is modified or deleted by these Supplementary Instructions to Bidders, the unaltered portions of that Article, Paragraph, Subparagraph or Clause shall remain in effect.

ARTICLE 3 BIDDING DOCUMENTS

3.4 ADDENDA

3.4.4 Add the following sentence to Subparagraph 3.4.4:

If the Bidder fails to acknowledge receipt of each Addendum, then the Bid may be rejected.

ARTICLE 4 BIDDING PROCEDURES

4.2 BID SECURITY

4.2.1 Delete the last sentence of Subparagraph 4.2.1.
4.2.2 Delete Subparagraph 4.2.2 in its entirety and substitute the following:

4.2.2 Each Bid shall be accompanied by a certified check payable to the Owner for five percent (5%) of the total Bid, or in lieu of a certified check, a Bid Bond may be provided on the State of West Virginia form included in the Project Manual for five percent (5%) of the total Bid. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of power of attorney. Bonds issued by nonresident companies or agencies must be countersigned by a resident agent of the State of West Virginia.

4.3 SUBMISSION OF BIDS

4.3.1 Add the following Clause to Subparagraph 4.3.1:

4.3.1.1 Bids shall be submitted on the Form of Proposal included in the Bidding Documents. Each Bidder should obtain a Request for Bids/Quotations from the party receiving Bids and must follow all instructions contained therein. The Request for Bids/Quotations should be stapled to the front of the Form of Proposal. Each Bid shall be enclosed in a sealed, self addressed, opaque envelope plainly marked with the following information:

SEALED BID

Proposal for: (Project Name)
Buyer File Number:
Request for Bids/Quotations Number:
Time of Bid Opening:
Date of Bid Opening:

The information required above may be obtained from the Request for Bids/Quotations.

4.4 MODIFICATION OR WITHDRAWAL OF BID

4.4.1 Add the following Clause to Subparagraph 4.4.1:

4.4.1.1 Bids may not be modified or withdrawn for a period of sixty (60) days after receipt of Bids without forfeiture of Bid security, not as a penalty but as liquidated damages.

ARTICLE 6 POST-BID INFORMATION

6.2 OWNER'S FINANCIAL CAPABILITY

6.2 Delete Paragraph 6.2 in its entirety.

ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

7.1 BOND REQUIREMENTS

7.1.1 Add the following Clause to Subparagraph 7.1.1:

7.1.1.1 The successful Bidder shall furnish a Performance Bond and a Labor and Material Payment Bond for 100% of the contract award and, if applicable, a two year roofing Maintenance Bond for the full value of the roofing system. Bonds issued by nonresident companies or agencies must be countersigned by a resident agent of the State of West Virginia.

7.2 TIME OF DELIVERY AND FORM OF BONDS

7.2.1 Delete Subparagraph 7.2.1 in its entirety and substitute the following:

7.2.1 The successful Bidder shall deliver the required bonds and all other Contract Documents, including Certificates of Insurance, within 15 days after receipt of the Owner's letter of intent to award a Contract. All Contract Documents must be properly executed. Should the successful Bidder fail or refuse to deliver the required bonds and all other Contract Documents, properly executed, within 15 days after receipt of the Owner's notice of intent to award a Contract, the successful Bidder shall forfeit the security deposited with his Bid as liquidated damages, not as a penalty.

7.2.2 Delete Subparagraph 7.2.2 in its entirety and substitute the following:

7.2.2 The bonds shall be written on the State of West Virginia forms bound in the Project Manual and according to the instructions provided with these forms.

Add the following Article 9 to the Instructions to Bidders:

ARTICLE 9
OTHER CONDITIONS

9.1 PREVAILING WAGE RATES

9.1.1 The successful Bidder and all Subcontractors shall pay the higher of the U. S. Department of Labor minimum wage rates or the West Virginia Department of Labor wage rates as established for County in which the Project is located pursuant to West Virginia Code §21-5-1 et. seq. (See applicable West Virginia Department of Labor Wage Rates following Supplementary General Conditions and/or Special Conditions).

9.2 WAGE BOND

9.2.1 Firms engaged in construction work in West Virginia less than five years preceding the date of the Bid shall post a wage bond with the West Virginia Department of Labor.

9.3 CONTRACTOR'S LICENSE

9.3.1 West Virginia Code §21-11-2 requires that all persons desiring to perform contractual work in West Virginia must be duly licensed. The West Virginia

Contractor's Licensing Board is empowered to issue the contractor's license. Application for a contractor's license may be made by contacting the West Virginia Department of Labor.

9.3.2 West Virginia Code §21-11-11 requires Bidders to include the Bidder's contractor's license number on its Bid.

9.3.3 The successful Bidder shall furnish a copy of its contractor's license prior to issuance of a Purchase Order/Contract.

9.4 VENDOR REGISTRATION

9.4 The successful Bidder must be a registered vendor with the West Virginia Department of Administration, Purchasing Division, prior to issuance of a purchase order. If the Bidder is not a registered vendor, application should be made to the Purchasing Division. The Bidder should obtain a vendor number prior to the Bid Opening.

9.5 NOTICE TO PROCEED

9.5.1 Any work performed or any materials contracted for prior to receipt of the Owner's written Notice to Proceed and/or Purchase Order shall be at the Bidder's risk.

9.5 CONTRACT TIME

9.5.1 The successful Bidder, as a condition of the Contract, agrees that all Work is to be Substantially Complete within the Contract Time stated in the Invitation to Bid and/or Request for Bids/Quotations.

9.5.2 The Owner will suffer financial loss if the Work is not Substantially Complete within the Contract Time. For each calendar day of delay in achieving Substantial Completion, the Contractor shall be liable for and shall pay the Owner the amount of liquidated damages stated in the Invitation to Bid and/or Request for Bids/Quotations, not as a penalty, but as liquidated damages. Allowances may be made for delays due to shortages of materials and/or energy resources, subject to proof by documentation, and also for delays due to strikes or other delays beyond the control of the Contractor. All delays and any claim for extension of the Contract Time must be properly documented in accordance with the Contract Documents by the Contractor.

END OF SUPPLEMENTARY INSTRUCTIONS TO
BIDDERS

APPROVED AS TO FORM THIS 9th
DAY OF April, 1999

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL
April 1999

BY: Laura E. Warfield

SECTION 00200
FORM OF PROPOSAL
&
BID BOND AND INSTRUCTIONS

FORM OF PROPOSAL

TO THE OWNER: SHEPHERD UNIVERSITY
By:

PROJECT: Requisition No. P0005400

Date: February 11, 2015

SUBMITTING CONTRACTOR: _____

TELEPHONE NUMBER: _____

Shepherd University
Student Center
Window & Door Replacement
Shepherdstown, West Virginia

BFM Project No. 14104

The undersigned, hereinafter call the Bidder, being familiar with and understanding the Bidding Documents and also have examined the site and being familiar with all local conditions affecting the Project hereby proposes to furnish all labor, material, equipment, supplies and transportation, and to perform all Work in accordance with the Bidding Documents within the time set forth below for the sum of:

A. BASE BID

_____ \$ _____
written *figures*

(Amount to be shown in both words and numbers. In the event of a difference between the written amount and the number amount, the written amount shall prevail.)

B. ADD ALTERNATE NO. 1: Operable Window Units

_____ \$ _____
written *figures*

ADD ALTERNATE NO. 2: Door and Frame Replacement

_____ \$ _____
written *figures*

ADD ALTERNATE NO. 3: Mecho Shade Window Treatments

_____ \$ _____
written *figures*

(Amount to be shown in both words and numbers. In the event of a difference between the written amount and the number amount, the written amount shall prevail.)

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

C. UNIT PRICES:

1. No. 1 – Horizontal Louver Blinds \$ _____/ea.

It is understood that the bid price will be firm for a time period of sixty (60) calendar days from the bid opening date and that if the undersigned is notified of acceptance of this proposal within this time period, the firm shall complete the total work no later than the Construction Time identified in the Contract Documents. If this work is not completed within the time period specified, the contractor will be liable for Liquidated Damages of \$2,000.00 per calendar day for the first five (5) days and \$3,000.00 per calendar day for every day thereafter.

RESPECTFULLY SUBMITTED:

Signature: _____ DATE: _____
Signature in Ink

Name: _____
Please Type or Print

Title: _____ Corporate Seal if Applicable

Firm Name: _____

Firm Address: _____

Telephone: _____

Contractor's License No: _____

CONTRACTOR'S LICENSE

West Virginia Code 21-11-2 requires that all persons desiring to perform contractual work in West Virginia must be duly licensed. The West Virginia Contractor's Licensing Board is empowered to issue a contractor's license. Application for a contractor's license may be made by contracting the West Virginia Department of Labor, 1800 Washington Street, East, Charleston, West Virginia 25305. Telephone (304) 558-7890. West Virginia Code 21-11 requires a Bidder to include its contractor's license number on its Bid. The successful Bidder will be required to furnish a copy of its contractor's license prior to issuance of a Purchase Order/Contract. Please complete and attach EXHIBIT B to the Bid.

ADDENDA ACKNOWLEDGMENT

The undersigned hereby acknowledges receipt of the following Addenda and has taken the information contained therein into full consideration in the formulation of this Bid.

Addenda: No. 1 _____ No. 2 _____ No. 3 _____
No. 4 _____ No. 5 _____ No. 6 _____

Failure to acknowledge receipt of each Addendum may be cause for rejection of the Bid.

SIGNATURE: _____ DATE _____
Signature In Ink

END OF FORM OF PROPOSAL

Agency _____
REQ.P.O# _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, _____
of _____, _____, as Principal, and _____
of _____, _____, a corporation organized and existing under the laws of the State of _____
with its principal office in the City of _____, as Surety, are held and firmly bound unto the State
of West Virginia, as Obligee, in the penal sum of _____ (\$ _____) for the payment of which,
well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns.

The Condition of the above obligation is such that whereas the Principal has submitted to the Purchasing Section of the
Department of Administration a certain bid or proposal, attached hereto and made a part hereof, to enter into a contract in writing for

NOW THEREFORE,

- (a) If said bid shall be rejected, or
- (b) If said bid shall be accepted and the Principal shall enter into a contract in accordance with the bid or proposal attached
hereto and shall furnish any other bonds and insurance required by the bid or proposal, and shall in all other respects perform the
agreement created by the acceptance of said bid, then this obligation shall be null and void, otherwise this obligation shall remain in full
force and effect. It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event,
exceed the penal amount of this obligation as herein stated.

The Surety, for the value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no
way impaired or affected by any extension of the time within which the Obligee may accept such bid, and said Surety does hereby
waive notice of any such extension.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hands and seals, and such of them as are corporations
have caused their corporate seals to be affixed hereunto and these presents to be signed by their proper officers, this

_____ day of _____, 20_____.

Principal Corporate Seal

(Name of Principal)

By _____

(Must be President or
Vice President)

(Title)

Surety Corporate Seal

(Name of Surety)

Attorney-in-Fact

**IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance. Raised corporate seals
must be affixed, a power of attorney must be attached.**

BID BOND PREPARATION INSTRUCTIONS

AGENCY _____ (A)
RFQ/RFP# _____ (B)

Bid Bond

- (A) WV State Agency
(Stated on Page 1 "Spending Unit")
Request for Quotation Number (upper right corner of page #1)
- (C) Your Company Name
- (D) City, Location of your Company
- (E) State, Location of your Company
- (F) Surety Corporate Name
- (G) City, Location of Surety
- (H) State, Location of Surety
- (I) State of Surety Incorporation
- (J) City of Surety Incorporation
- (K) Minimum amount of acceptable bid bond is 5% of total bid. You may state "5% of bid" or a specific amount on this line in words.
- (L) Amount of bond in figures
- (M) Brief Description of scope of work
- (N) Day of the month
- (O) Month
- (P) Year
- (Q) Name of Corporation
- (R) Raised Corporate Seal of Principal
- (S) Signature of President or Vice President
- (T) Title of person signing
- (U) Raised Corporate Seal of Surety
- (V) Corporate Name of Surety
- (W) Counter Signature by WV agent
- (X) Signature of Attorney in Fact of the Surety

NOTE: Dated, Power of Attorney with Raised Surety Seal must accompany this bid bond.

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, _____ (C) of _____ (D), _____ (E) as Principal, and _____ (F) of _____ (G), _____ (H), a corporation organized and existing under the laws of the State of _____ (I) with its principal office in the City of _____ (J), as Surety, are held and firmly bound unto The State of West Virginia, as Obligee, in the penal sum of _____ (K) (\$ _____ (L)) for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns.

The Condition of the above obligation is such that whereas the Principal has submitted to the Purchasing Section of the Department of Administration a certain bid or proposal, attached hereto and made a part hereof to enter into a contract in writing for _____ (M)

NOW THEREFORE.

(a) If said bid shall be rejected, or

(b) If said bid shall be accepted and the Principal shall enter into a contract in accordance with the bid or proposal attached hereto and shall furnish any other bonds and insurance required by the bid or proposal, and shall in all other respects perform the agreement created by the acceptance of said bid then this obligation shall be null and void, otherwise this obligation shall remain in full force and effect. It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated

The Surety for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of time within which the Obligee may accept such bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be affixed hereto and these presents to be signed by their proper officers, this _____ (N) day of _____ (O), 20 _____ (P).

Principal Corporate Seal

(R)

(Name of Principal)
By _____
(Must be President or Vice President)

Title

(U)
Surety Corporate Seal

(Name of Surety)

Countersigned:

Resident West Virginia Agent

Attorney-in-Fact

IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance. Corporate seals must be affixed, a power of attorney must be attached, and a West Virginia resident must sign or countersign.

SECTION 00300

- A. Standard Form of Agreement Between Owner and Contractor (AIA Document A101-2007)**
- B. General Conditions of the Contract for Construction (AIA Document A201-2007)**
- C. State of West Virginia Supplementary Conditions to the General Conditions of Contract for Construction AIA A201-2007**
- D. Performance Bond with Acknowledgment and Acknowledgment Preparation Instructions**
- E. Labor and Material Bond with Acknowledgment and Acknowledgment Preparation Instructions**
- F. Acord Certificate of Liability Insurance with Minimum Amounts for the Construction Project**
- G. Purchasing Affidavit**
- H. Preference for Use of Domestic Steel Products**
- I. Drug Free Workplace Conformance Affidavit**
- J. Vendor Registration and Disclosure Statement**

SECTION 00300

- A. Standard Form of Agreement Between Owner and Contractor (AIA Document A101-2007)**



Document A101™ – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Shepherd University
P. O. Box 5000
Shepherdstown, WV 25443-5000

and the Contractor:
(Name, legal status, address and other information)

for the following Project:
(Name, location and detailed description)

Student Center Window and Door Replacement
Shepherd University
Shepherdstown, West Virginia
BFM Project No. 14104

The Architect:
(Name, legal status, address and other information)

Bushey Feight Morin Architects Inc.
473 North Potomac Street
Hagerstown, Maryland 21740

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

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

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

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

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

Init.

Portion of Work

Substantial Completion Date

subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE 4 CONTRACT SUM

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

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 4.3 Unit prices, if any:
(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.4 Allowances included in the Contract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
------	-------

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than () days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported

by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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

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

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

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

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

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

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

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

§ 5.2 FINAL PAYMENT

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

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

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

Init.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

§ 6.2 BINDING DISPUTE RESOLUTION

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

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

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

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

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

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

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

%

§ 8.3 The Owner's representative:

(Name, address and other information)

Don Nuckols and
Tom Crampton
Shepherd University
P. O. Box 5000
Shepherdstown, WV 25443-5000

§ 8.4 The Contractor's representative:
(Name, address and other information)

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

§ 8.6 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

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

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

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

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ 9.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
---------	-------	------	-------

§ 9.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
--------	-------	------

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
--------	------	-------

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

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

Int.

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

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

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
---------------------------	--

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

OWNER *(Signature)*
 Debra Langford Hiergeist, Executive Dir. of
 Procurement Services

(Printed name and title)

CONTRACTOR *(Signature)*

(Printed name and title)

Additions and Deletions Report for AIA[®] Document A101[™] – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:06:50 on 01/16/2015.

PAGE 1

Shepherd University
P. O. Box 5000
Shepherdstown, WV 25443-5000

...

Student Center Window and Door Replacement
Shepherd University
Shepherdstown, West Virginia
BFM Project No. 14104

...

Bushey Feight Morin Architects Inc.
473 North Potomac Street
Hagerstown, Maryland 21740

PAGE 5

Don Nuckols and
Tom Crampton
Shepherd University
P. O. Box 5000
Shepherdstown, WV 25443-5000

PAGE 7

Debra Langford Hiergeist, Executive Dir. of
Procurement Services

Certification of Document's Authenticity
AIA® Document D401™ – 2003

I, Linda L. Deibert, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:06:50 on 01/16/2015 under Order No. 5226302413_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

SECTION 00300

**B. General Conditions of the Contract for Construction
(AIA Document A201-2007)**



Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Student Center Window and Door Replacement
Shepherd University
Shepherdstown, West Virginia
BFM Project No. 14104

THE OWNER:

(Name, legal status and address)

Shepherd University
P. O. Box 5000
Shepherdstown, WV 25443-5000

THE ARCHITECT:

(Name, legal status and address)

Bushey Feight Morin Architects Inc.
473 North Potomac Street
Hagerstown, Maryland 21740

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- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

ADDITIONS AND DELETIONS:

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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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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.

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§ 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

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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

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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.

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§ 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 that 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.

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§ 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.

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§ 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

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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.

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§ 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;

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- .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

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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.

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§ 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

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- .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

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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

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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.

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§ 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.

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§ 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.

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§ 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.

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§ 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.

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§ 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

Init.

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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Additions and Deletions Report for AIA® Document A201™ – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

Student Center Window and Door Replacement
Shepherd University
Shepherdstown, West Virginia
BFM Project No. 14104

...

(Name, legal status and address)
Shepherd University
P. O. Box 5000
Shepherdstown, WV 25443-5000

...

(Name, legal status and address)
Bushey Feight Morin Architects Inc.
473 North Potomac Street
Hagerstown, Maryland 21740

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Linda L. Deibert, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:18:36 on 12/16/2014 under Order No. 5226302413_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Date)

SECTION 00300

**C. State of West Virginia Supplementary Conditions
to AIA Document A201-2007
General Conditions to the Contract for Construction**

State of West Virginia

Supplementary Conditions to AIA Document A201-2007
General Conditions of the Contract for Construction

The following Supplementary Conditions modify the General Conditions of the Contract for Construction, AIA Document A201, 2007 Edition. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

ARTICLE 1
GENERAL PROVISIONS

ANY PROVISION OF THE AIA DOCUMENT A101-2007 STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR THAT CONFLICTS WITH THESE SUPPLEMENTARY CONDITIONS IS NULL AND VOID.

Add the following Section to Article 1:

§1.05 PARTY RELATIONS

§1.05 The Owner and their consultants, the Architect and their Consultants, and the Contractor and their Subcontractors agree to proceed with the Work on the basis of mutual trust, good faith and fair dealing.

§1.1 BASIC DEFINITIONS

§1.1.1 THE CONTRACT DOCUMENTS

§1.1.1 Delete the last sentence of this Section and substitute the following:

The Contract Documents also include the Bidding Documents (Advertisement or Invitation to Bid, Request for Quotations/Bids, Instructions to Bidders, Form of Proposal, Bid Bond and Sample Forms), Performance Bond, Payment Bond, Maintenance Bond (if applicable), Certificates of Insurance, Special Provisions For Disadvantaged and Women Business Enterprise Utilization (if bound herein), and West Virginia Department of Labor Wage Rates.

§1.1.2 THE CONTRACT

§1.1.2 Make the following changes to Section 1.1.2:

In the last sentence, insert "and the Contractor" after "The Architect" and delete "the Architect's" and insert "their respective".

ARTICLE 2
OWNER

§2.1 GENERAL

§2.1.2 Delete Section 2.1.2 in its entirety.

§2.1 Add the following Section to 2.1:

§2.1.3 The Owner reserves the right to maintain a full time project representative at the site who shall have such duties and responsibilities as the Owner may assign. The Owner's representative shall not interfere with or be responsible for the Contractor's means, methods, techniques, sequences and procedures for accomplishing the Work.

§2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§2.2.3 Delete the last sentence of Section 2.2.3 and substitute the following:

The Contractor shall confirm the locations of each utility. If the Owner has provided geotechnical and other tests to determine subsurface conditions, the Owner will provide such documents to the Contractor; the Contractor acknowledges that it will make no claims for any subsurface or any other conditions revealed by these tests.

§2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§2.4 Delete the third sentence of Section 2.4.

ARTICLE 3
CONTRACTOR

§3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§3.2.2 Add the following sentence to the end of Section 3.2.2:

Claims by Contractor resulting from its failure to familiarize itself with the site or pertinent documents shall be deemed waived.

§3.2.3 Delete Section 3.2.3 in its entirety and substitute the following:

§3.2.3 The Contractor acknowledges its continuing duty to review and evaluate the Construction Documents during performance of its services and shall immediately notify the Owner and the Architect about any problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and variances it discovers between the Construction

Documents and applicable laws, statutes, building codes, rules and regulations.

§ 3.2.4 Add the following clauses to Section 3.2.4:

§3.2.4.1 If the Contractor performs any Work which it knows or should have known involves a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Owner and the Architect prior to receiving written authorization from the Architect to proceed, the Contractor shall be responsible for the consequences of such performance.

§3.2.4.2 Before ordering any materials or doing any Work, the Contractor and Subcontractors shall verify all measurements at the site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Architect prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on the drawings, if such differences do not result in a change in the scope of Work or if the Architect failed to receive written notice before the Work was performed.

§3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§3.3.1 Make the following changes to Section 3.3.1:

In the last sentence, delete the word "solely" the first time it appears and insert at the end of this sentence "unless the Contractor is grossly negligent."

§3.4 LABOR AND MATERIALS

§3.4.1 Add the following clauses to Section 3.4.1:

§3.4.1.1 In accordance with West Virginia Code §5-19-1 *et seq.*, every contract and subcontract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works, where the cost is more than \$50,000 and, in the case of steel only, where the cost of steel is more than \$50,000 or where more than 10,000 pounds of steel are required, the State will accept only aluminum, glass or steel products produced in the United States. In addition, items of machinery or equipment purchased for use at the site of public works, shall be made of domestic aluminum, glass or steel, unless the cost of the product is less than \$50,000 or less than 10,000 pounds of steel are used in the public works project.

§3.4.1.2 Foreign made aluminum, glass or steel products may be accepted only if the cost of domestic products is found to be unreasonable. Such cost is unreasonable if it is twenty percent (20%) or more higher than the bid price for foreign made products. If the domestic aluminum, glass or steel products to be supplied or produced are in a "substantial labor surplus area," as defined by the

United States Department of Labor, foreign made products may be supplied only if domestic products are thirty percent (30%) or more higher in price than the foreign made products.

§3.4.1.3 If, prior to the award of a contract under the above provisions, the spending officer of the spending unit determines that there exists a bid for like foreign aluminum, glass or steel that is reasonable and lower than the lowest bid for domestic products, the spending officer may request in writing a reevaluation and reduction in the lowest bid for such domestic products. All vendors must indicate in their bid if they are supplying foreign aluminum, glass or steel.

§3.4.1.4 PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS

.1 Except when authorized by the director of the Purchasing Division pursuant to Subclause 2 below, no contractor may use or supply steel products for a state contract project other than those steel products made in the United States. As used in this contract:

a. "State contract project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of any materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.

b. "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made by the open hearth, basic oxygen, electric furnace, bessemer or other steel making process.

c. "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

.2 The director of the Purchasing Division may, in writing, authorize the use of foreign steel products if:

a. The cost for each contract item used does not exceed one tenth of one percent (.1 %) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this contract, the cost is the value of the steel product as delivered to the project; or

b. The director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

3 A contractor who uses steel products in violation of this Clause may be subject to civil penalties pursuant to West Virginia Code §5A-3-56.

§3.4.1.5 The Contractor and all Subcontractors shall pay the higher of the U. S. Department of Labor minimum wage rates or the West Virginia Department of Labor minimum wage rates for the County in which this contract is performed, pursuant to West Virginia Code §21-5A-1 *et seq.*

§3.4.1.6 WEST VIRGINIA JOBS ACT: Pursuant to West Virginia Code §21-1C-1 *et seq.*, every public improvement contract or subcontract let by a public authority shall contain the following language:

1 DEFINITIONS:

a. The term "construction project" means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract in an amount equal to or greater than one million dollars (\$1,000,000). The term "construction project" does not include temporary or emergency repairs;

b. (1) The term "employee" means any person hired or permitted to perform hourly work for wages by a person, firm or corporation in the construction industry;

(2) The term "employee" does not include:

(A) Bona fide employees of a public authority or individuals engaged in making temporary or emergency repairs;

(B) Bona fide independent contractors; or

(C) Salaried supervisory personnel necessary to assure efficient execution of the employee's work;

c. The term "employer" means any person, firm or corporation employing one or more employees on any public improvement and includes all contractors and subcontractors;

d. The term "local labor market" means every county in West Virginia and all counties bordering West Virginia that fall within seventy-five (75) miles of the border of West Virginia;

e. The term "public authority" means any officer, board, commission or agency of the State of West Virginia and its political subdivisions, including counties and municipalities. Further, the Economic Grant Committee, Economic Development Authority, Infrastructure and Jobs Development Council and School Building Authority shall

be required to comply with the provisions of this Clause for loans, grants or bonds provided for public improvement construction projects; and

f. The term "public improvement" includes the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures that may be let to contract by a public authority, excluding improvements funded, in whole or in part, by federal funds.

2 LOCAL LABOR MARKET UTILIZATION ON PUBLIC IMPROVEMENT CONSTRUCTION PROJECTS; WAIVER CERTIFICATES:

a. Employers shall hire at least seventy-five percent (75%) of employees for public improvement construction projects from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project.

b. Any employer unable to employ the minimum number of employees from the local labor market shall inform the nearest office of the Bureau of Employment Programs' Division of Employment Services of the number of qualified employees needed and provide a job description of the positions to be filled.

c. If, within three (3) business days following the placing of a job order, the Division is unable to refer any qualified job applicants to the employer or refers less qualified job applicants than the number requested, then the Division shall issue a waiver to the employer stating the unavailability of applicants and shall permit the employer to fill any positions covered by the waiver from outside the local labor market. The waiver shall be either oral or in writing and shall be issued within the prescribed three (3) days. A waiver certificate shall be sent to both the employer for its permanent project records and to the public authority.

3 SCOPE; REPORTING REQUIREMENTS:

a. Pursuant to West Virginia Code §21-1C-5, the West Virginia Jobs Act applies to expenditures for construction projects by any public authority for public improvements as defined by this Act.

b. For public improvement projects let pursuant to the West Virginia Jobs Act, the public authority shall file or require an employer as defined in Chapter 21, Article 1C, Section 2 to file with the Division of Labor copies of the waiver certificates and certified payrolls, pursuant to West Virginia Code, Chapter 21, Article 5A, or other comparable documents that include the number of employees, the

county and state wherein the employees reside and their occupation.

c. The Division of Labor shall compile the information required by this section and submit it annually to the Joint Committee on Government and Finance by the fifteenth day of October. The joint committee may forward these reports to the Legislative Auditor to review and make comments regarding the usefulness of the information collected and to suggest changes to the division's method of reporting to ensure the information collected will prove useful in evaluating the effectiveness of the provisions of this Clause.

d. Each public authority has the duty to implement the reporting requirements of this Clause. Every public improvement contract or subcontract let by a public authority shall contain provisions conforming to the requirements of this Clause.

e. The Division of Labor is authorized to establish procedures for the efficient collection of data, collection of civil penalties prescribed in West Virginia Code §21-1C-6 and transmittal of data to the Joint Committee on Government and Finance.

.4 PENALTIES: Pursuant to West Virginia Code §21-1C-6, any employer who violates any provision of this Clause is subject to a civil penalty of one hundred dollars (\$100) per day of violation.

§3.4.1.7 PUBLIC IMPROVEMENT CONTRACTS & DRUG-FREE WORKPLACE ACT: The Contractor must, at all times during the term of this Agreement, be in compliance with West Virginia Code §21-1D-1 et seq., which provides, in part:

.1 DEFINITIONS:

- a. The term "construction", as used in this article, means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract the value of which contract is over \$100,000. The term "construction" does not include temporary or emergency repairs;
- b. The term "contractor" means any employer working on a public improvement without regard to whether they are serving as the prime or subcontractor to another;
- c. The term "employee" means a laborer, mechanic or other worker. For the purposes of this article, employee does not include those persons as are employed or hired directly by a public authority on a regular or temporary basis engaged exclusively in

making temporary or emergency repairs. Furthermore, employee does not include those persons employed by a contractor who does not work in public improvement construction;

d. The term "public authority", as used in this article, means any officer, board or commission or other agency of the State of West Virginia, its counties or municipalities or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement, including any institution supported, in whole or in part, by public funds of the State of West Virginia and this article applies to expenditures of these institutions made, in whole or in part, from public funds; and

e. The term "public improvement", as used in this article, includes all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures upon which construction may be let to contract by the State of West Virginia, its counties or municipalities or any political subdivision thereof.

.2 No public authority may award a public improvement contract which is to be let to bid to a contractor unless the terms of the contract require the contractor and its subcontractors to implement and maintain a written drug-free workplace policy in compliance with this article and the contractor and its subcontractors provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free workplace policy in compliance with this article.

The public improvement contract shall provide for the following:

- (1) That the contractor implements its drug-free workplace policy;
- (2) Cancellation of the contract by the awarding public authority if the contractor:
 - (A) Fails to implement its drug-free workplace policy;
 - (B) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or
 - (C) Provides to the public authority false information regarding the contractor's drug-free workplace policy.

.3 Each contractor that submits a bid for the work must submit at the same time an affidavit that the contractor has a written plan for a drug-free workplace policy in compliance with West Virginia Code §21-1D-5. A public improvement contract may not be awarded to a contractor who does not have a written

plan for a drug-free workplace policy and who has not submitted that plan to the appropriate contracting authority in timely fashion.

.4 In instances where a worker is required by law to follow United States Department of Transportation drug testing guidelines, no additional drug tests are required under this article.

.5 A clearly legible copy of the contractor's written drug-free workplace policy shall be kept posted in a prominent and easily accessible place at the public improvement construction site thereof by each contractor subject to the provisions of this article.

.6 Every contractor shall keep an accurate record showing the names, occupation and safety-sensitive status of all employees, in connection with the construction on the public improvement, and showing any drug tests or alcohol tests performed and employee education and supervisor training received, which record shall be open at all reasonable hours for inspection by the public authority which let the contract and its officers and agents. It is not necessary to preserve the record for a period longer than three (3) years after the termination of the contract.

.7 All drug testing information specifically related to individual employees is confidential and should be treated as such by anyone authorized to review or compile program records. Drug test results may not be used in a criminal proceeding without the employee's consent.

.8 No less than once per year, or upon completion of the project, every contractor shall provide a certified report to the public authority which let the contract. The report shall include:

- (1) Information to show that the education and training service to the requirements of section five [§ 21-1D-5] of this article was provided;
- (2) The name of the laboratory certified by the United States Department of Health and Human Services or its successor that performs the drug tests pursuant to this article;
- (3) The average number of employees in connection with the construction on the public improvement;
- (4) Drug test results for the following categories including the number of positive tests and the number of negative tests:
 - (A) Preemployment and new hires;
 - (B) Reasonable suspicion;

(C) Post-accident;

(D) Random.

.9 PENALTIES:

a. Any contractor who violates any provision of this article is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000; for the third or any subsequent offense within the preceding five years, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$25,000 and the contractor shall be excluded from bidding any additional new public improvement projects for a period of one year.

b. Any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$250.

§3.4 Add the following Sections to 3.4:

§3.4.4 Where materials and equipment are to be provided by the Owner under the Contract Documents, the Contractor shall notify the Owner in writing as to when materials and equipment are required on the project site in sufficient time to avoid delay in the Work.

§3.4.5 The Contractor shall employ labor on the Project or in connection with the Work, capable of working harmoniously with all trade crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts and implement policies and practices to minimize the likelihood of any strike, work stoppage or other labor disturbance. Except as specifically provided in this Agreement, Contractor shall not be entitled to any adjustment in the Contract sum or Contract time and shall be liable to the Owner for all damages suffered by the Owner occurring as a result of work stoppages, slowdowns, disputes, or strikes by the work force of or provided by Contractor or its Subcontractors.

§3.5 WARRANTY

§3.5 Add the following sentence at the end of Section 3.5:

The Contractor agrees to assign to the Owner at time of Final Completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such warranties.

§3.8 ALLOWANCES

§3.8.3 Make the following change to Section 3.8.3:

§3.8.3 Delete "with reasonable promptness" and insert "in sufficient time to avoid delay in the Work."

Add the following Section to 3.8:

§3.8.4 The Contractor shall promptly submit to the Owner an itemized account of any expenditure by the Contractor of the Contract allowance in sufficient detail to allow the Owner to properly account for such expenditure.

§3.9 SUPERINTENDENT/PROJECT MANAGER

§3.9.1 Add the following sentence to the end of Section 3.9.1:

The Contractor may also employ a competent project manager.

§3.9.2 Make the following changes to Section 3.9.2:

In the first sentence, add "and project manager, if applicable" after "superintendent." In the second sentence, add "or project manager, if applicable," after "superintendent."

§3.9.3 Make the following changes to Section 3.9.3:

In the first sentence, add "or project manager, if applicable," after "superintendent." In the second sentence, add "or project manager, if applicable," after "superintendent."

§3.9 Add the following Section to 3.9:

§3.9.4 The Owner shall have the right, at any time, to direct a change in the Contractor's representatives if their performance is deemed unsatisfactory.

§3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§3.10.1 Make the following changes to Section 3.10.1:

In the first sentence, delete the word "promptly" and substitute "by the earliest reasonable date."

Add the following sentence to the end of Section 3.10.1: "The Contractor shall submit an updated construction schedule with each payment application, unless waived by the Owner."

Add the following Sections to 3.10:

§3.10.4 At any time after the first thirty (30) days of the Contract Time, if it is found that the project is two (2) weeks or more behind schedule, beyond approved time extensions, or if at any time during the last thirty (30) days of the scheduled Contract Time the

Contractor is one (1) week or more behind schedule, the Contractor shall immediately submit a plan to the Owner describing how the Work will be placed back on schedule within the remaining Contract Time.

§3.10.5 If the Owner and the Architect determine that the performance of the Work during any stage of the construction schedule last approved by the Owner has not progressed or reached the level of completion required by the Contract Documents, the Owner will have the right to order the Contractor to take corrective measures (hereinafter referred to collectively as Extraordinary Measures) necessary to expedite the progress of the Work, including, without limitation: (1) working additional shifts or overtime; (2) supplying additional manpower, equipment and facilities; and (3) other similar measures. Such Extraordinary Measures shall continue until the progress of the Work complies with the last approved construction schedule. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule after allowing for approved extensions of Contract Time as provided elsewhere in this Agreement. The Contractor is not entitled to an adjustment in the Contract Sum in connection with any Extraordinary Measures required by the Owner. The Owner may exercise its rights under this Section as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with the construction schedule.

§3.11 DOCUMENTS AND SAMPLES AT THE SITE

§3.11 Insert the following sentence at the end of Section 3.11:

The Contractor's compliance with this Section 3.11 shall be a condition precedent to any obligation of the Owner to make Final Payment pursuant to this Agreement.

§3.15 CLEANING UP

§3.15.2 Delete Section 3.15.2 in its entirety and substitute the following:

§3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and may withhold such reasonable costs as necessary for the fulfillment of the Contractor's obligation under this Section 3.15. If the reasonable costs of such cleaning exceed the Contract Sum then due the Contractor, the Contractor shall reimburse the Owner the difference within thirty (30) consecutive calendar days of the Owner's written request.

§3.15 Add the following Section to 3.15:

§3.15.3 In order to achieve Substantial Completion, as defined by Section 9.8, for any portion of the Work, the Contractor must have the area where the Work is located fully cleaned and all materials and/or debris removed from site. The Certificate of Substantial

Completion will not be issued until the Contractor has met this obligation.

**ARTICLE 4
ARCHITECT**

§4.1 GENERAL

§4.1.1 Make the following changes to Section 4.1.1:

In first sentence, delete the period and add ", when required pursuant to West Virginia Code §30-12-1 et seq." Add the following sentence at the end of Section 4.1.1: "If the Owner does not retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located, the Owner will appoint an individual to assume the role and obligations of the Architect pursuant to this Agreement."

§4.2 ADMINISTRATION OF THE CONTRACT

§4.2 Make the following changes to Section 4.2:

§4.2.1 In the first sentence of Section 4.2.1 after the word Architect add ", unless otherwise indicated by the Owner,".

§4.2.2 In the first sentence of Section 4.2.2 strike the word "generally."

§4.2.3 In the first sentence of Section 4.2.3 strike the word "reasonably."

§4.2.5 Add the following sentence at the end of Section 4.2.5:

The Architect upon receipt of an Application for Payment from the Contractor shall either review and certify such amounts due for payment or return such Application for Payment to the Contractor for correction(s) within five (5) consecutive business days of receipt.

§4.2.7 Delete the first sentence and substitute the following:

The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents.

§4.2.8 Make the following change to Section 4.2.8:

In the first sentence, after the word Architect add ", in consultation with the Owner,".

**ARTICLE 7
CHANGES IN THE WORK**

§7.2 CHANGE ORDERS

§7.2 Add the following Section to 7.2:

§7.2.2 A written Change Order as defined under 7.2.1 above constitutes a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to general conditions, all direct or indirect costs associated with such change and any and all adjustment to the Contract Sum and Contract Time.

§7.3 CONSTRUCTION CHANGE DIRECTIVES

§7.3.7 Make the following change in Section 7.3.7:

In the fourth line of the first sentence, delete the words "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" and substitute "an allowance for overhead and profit in accordance with clauses 7.3.11.1 through 7.3.11.9 below."

§7.3.9 Delete Section 7.3.9 in its entirety and substitute the following:

§7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment provided these amounts have been added to the Contract by Change Order and a purchase order has been issued for the Change Order.

§7.3.10 Add the following sentence at the end of Section 7.3.10:

The Change Order shall be issued by the Owner within 80 days following such agreement.

Add the following Section to 7.3:

§7.3.11 In Section 7.3.7, the allowance for overhead and profit included in the total cost to the Owner shall be based on the following schedule:

.1 For the Contractor, for any Work performed by the Contractor's own forces, fifteen percent (15%) of the cost.

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, ten percent (10%) of the amount due the Subcontractor.

.3 For each Subcontractor or Sub-Subcontractor involved, for any Work performed by that Subcontractor's own forces, fifteen percent (15%) of the cost.

.4. For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, ten percent (10%) of the amount due the Sub-subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the Change Order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the allowance for Overhead and Profit. Hand tools are defined as equipment with a value of \$1,000 or less. For Contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing Change Order proposals shall be not more than the monthly rate listed in the most current publication of The AED Green Book divided by 176 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the Change Order work.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, material, equipment and Subcontractors. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable.) Where major cost items are Subcontracts, they shall also be itemized as prescribed above. In no case will a change involving over \$10,000 be approved without such an itemization.

.7 Local Business and Occupation Taxes, if applicable, shall be calculated on the cost of the Work, overhead and profit.

.8 Overhead and profit shall not be calculated on changes in the Work involving unit prices. Unit prices are to have overhead and profit included in the price quoted.

ARTICLE 8 TIME

§8.3 DELAYS AND EXTENSIONS OF TIME

§8.3.1 In the first sentence, delete "unusual delay in deliveries."

ARTICLE 9 PAYMENTS AND COMPLETION

§9.2 SCHEDULE OF VALUES

§9.2 Make the following changes to Section 9.2:

In the first sentence add "and the Owner" after the first reference to the Architect. In the second sentence add "or the Owner" after Architect.

§9.3 APPLICATIONS FOR PAYMENT

§9.3 Make the following changes to Section 9.3:

§9.3.1 In the first sentence add "and the Owner" after the first reference to the Architect and add "and other required documents" after the words "schedule of values."

§9.3.1.1 Delete clause 9.3.1.1 in its entirety and substitute the following:

§9.3.1.1 Such applications may include requests for payment on account of changes in the Work authorized by Construction Change Directives and Change Orders only after a purchase order has been issued for the Work affected.

§9.3.1 Add the following clauses to Section 9.3.1:

§9.3.1.3 Until the Work is fifty percent (50%) complete, the Owner will withhold as retainage 10% of the amount due the Contractor on account of progress payments. At the time the Work is fifty percent (50%) complete and thereafter, if the manner of completion of the Work and its progress are and remain satisfactory to the Owner and Architect, and in the absence of other good and sufficient reasons, the Architect will, on presentation by the Contractor of Consent of Surety, authorize any remaining partial payments to be paid in full.

§9.3.1.4 The full Contract retainage may be reinstated if the manner of completion of the Work and its progress do not remain satisfactory to the Owner and Architect, if the Surety withholds its consent, or for other good and sufficient reasons.

§9.6 PROGRESS PAYMENTS

§9.6.7 Delete Section 9.6.7 in its entirety.

§9.7 FAILURE OF PAYMENT

§9.7 Make the following changes in Section 9.7:

In line two, change "seven days" to "sixty days." In line four, delete "binding dispute resolution" and substitute "a court of competent jurisdiction in the State of West Virginia."

§9.8 SUBSTANTIAL COMPLETION

§9.8.5 Add the following clause to Section 9.8.5:

§9.8.5.1 The payment of retainage shall be sufficient to increase the total payments to ninety-five percent (95%) for the Work or designated portion thereof being accepted as Substantially

Complete, less any amounts as the Architect shall determine for any Work that is not complete, not in accordance with the Contract Documents, or for unsettled claims.

§9.10 FINAL COMPLETION AND FINAL PAYMENT

§9.10.2 Make the following changes in Section 9.10.2:

In the first sentence, delete "for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner)."

Add the following clause to Section 9.10.2:

§9.10.2.1 Before final payment is due the Contractor, all applicable State and local taxes must be paid. If requested by the Owner, the Contractor shall present evidence that payment or satisfaction of all such tax obligations has been made.

§9.10.3 Add the following clause to Section 9.10.3:

9.10.3.1 Unless and to the extent final completion is delayed through no fault of the Contractor as provided in Section 9.10.3, the Owner shall be under no obligation to increase payments above ninety-five percent (95%) until final completion of the Work is Certified by the Architect.

Add the following Sections to Article 9:

§9.11 LIQUIDATED DAMAGES

§9.11.1 The Owner will suffer financial loss if the Work is not Substantially Complete within the Contract Time as defined in Article 8, and if final completion is not achieved within the specified time frame following Substantial Completion. As liquidated damages, and not as a penalty, the Contractor and the Contractor's surety shall be liable for and shall pay the Owner the sum(s) stated in this Agreement and/or purchase order.

§9.11.2 Allowances may be made for delays due to shortages of materials and/or energy resources, subject to proof by documentation, and also for delays due to strikes or other delays beyond the control of the Contractor. All delays and any claim for extension of Contract Time must be properly documented in accordance with Section 15.1.5 by the Contractor and must be made within the time limits stated in Section 15.1.2.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

§10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

§10.2.8 Make the following changes to Section 10.2.8:

In the first sentence, delete "within a reasonable time not exceeding 21 days" and substitute "immediately".

§10.3 HAZARDOUS MATERIALS

§10.3.3 Delete Section 10.3.3 in its entirety.

§10.3.6 Make the following change to Section 10.3.6:

Delete "indemnify" and substitute "reimburse."

ARTICLE 11 INSURANCE AND BONDS

§11.1 CONTRACTOR'S LIABILITY INSURANCE

§11.1.1 Make the following changes in Section 11.1.1:

§11.1.1.1 Delete the semicolon at the end of clause 11.1.1.1 and add:

"including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project."

§11.1.1.2 Delete the semicolon at the end of clause 11.1.1.2 and add:

"as described in West Virginia Code §23-4-2 (Mandolids), or persons or entities excluded by statute from the requirements of clause 11.1.1.1 but required by the Contract Documents to provide the insurance required by that clause."

§11.1.2 Add the following clause to Section 11.1.2:

§11.1.2.1 The insurance coverages required by Section 11.1.1 shall be written for not less than the minimum limits (or greater if required by law) set forth in the sample Certificate of Insurance following these Supplementary Conditions.

§11.1.4 Delete Section 11.1.4 in its entirety and substitute the following:

§11.1.4 The Owner shall require the Contractor to purchase and maintain liability insurance coverage, primary to the Owner's coverage under Paragraph 11.2. Owner, Architect, and Architect's Consultants shall be named as additional insureds on Contractor's Commercial General Liability Insurance specified for operations and completed operations, but only with respect for bodily injury, property damage or personal and advertising injury to the extent caused by the negligent acts or omissions of the Contractor, or those acting on the Contractor's behalf, in the performance of the Contractor's Work for the Owner at the Worksite.

§11.3 PROPERTY INSURANCE

§11.3.1 Make the following changes to Section 11.3.1:

At the beginning of the first sentence, delete "Unless otherwise provided, the Owner" and substitute "The Contractor".

Add the following sentences at the end of this Section:

The form of policy for this coverage shall be Completed Value. If the Owner is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall bear all reasonable costs properly attributable thereto.

§11.3.1.2 Delete clause 11.3.1.2 in its entirety.

§11.3.1.3 Delete clause 11.3.1.3 in its entirety.

§11.3.2 BOILER AND MACHINERY INSURANCE

§11.3.2 Make the following changes to Section 11.3.2:

In the first line, delete "Owner" and substitute "Contractor".

§11.3.4 Delete Section 11.3.4 in its entirety.

§11.3.5 Make the following changes in Section 11.3.5:

At the beginning of the first sentence, delete "Before an exposure to loss may occur, the Owner shall file with the Contractor" and substitute "Before an exposure to loss may occur, the Contractor shall file with the Owner".

At the end of the third sentence, delete "Contractor" and substitute "Owner."

§11.3.7 WAIVERS OF SUBROGATION

§11.3.7 Make the following change in Section 11.3.7:

At the end of the first sentence, delete "Owner" and substitute "Contractor".

§11.3.8 Make the following changes in Section 11.3.8:

In the first sentence, substitute "Contractor" for "Owner" each time the latter word appears.

§11.3.9 Make the following changes in Section 11.3.9:

Substitute "Contractor" for "Owner" each time the latter word appears, except in the last sentence. In the second sentence, delete "method of binding dispute resolution selected in the Agreement between the Owner and Contractor" and substitute "court award or judgment."

§11.3.10 Delete Section 11.3.10 in its entirety and substitute the following:

§11.3.10 The Contractor as fiduciary shall have the 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 Contractor's exercise of this power, if such objection is made, the dispute shall be resolved as provided in Section 4.5. The Contractor as fiduciary shall, in that case, make settlement with insurers in accordance with directions of the Court. If distribution of the insurance proceeds as directed by the Court is required, the Court will direct such distribution.

§11.4 PERFORMANCE BOND AND PAYMENT BOND

§11.4.1 Add the following clauses to Section 11.4.1:

§11.4.1.1 The Contractor shall provide, at the Contractor's expense, a Performance Bond and a Labor and Material Payment Bond for 100% of the Contract Sum and, if applicable, a two-year roofing Maintenance Bond for the full value of the roofing system. The surety company must be one with which the Owner has no reasonable objection and it must be authorized to transact surety insurance business in the State of West Virginia.

§11.4.1.2 An attorney-in-fact who executes the bonds on behalf of the surety shall affix thereto a certified and current copy of power of attorney.

§11.4.1.3 The bonds shall be issued on State of West Virginia forms. The Contractor shall deliver the required bonds and all other contract documents to the Owner not later than 15 days following receipt of the Owner's notice of intent to award a Contract.

Add the following Section to Article 11:

§11.5 WAGE BOND

The Contractor, if engaged in construction work in West Virginia less than five consecutive years preceding the date of the Bid, shall post a wage bond with the West Virginia Department of Labor.

**ARTICLE 13
MISCELLANEOUS PROVISIONS**

§13.6 INTEREST

§13.6 Delete Section 13.6 in its entirety and substitute the following:

Notwithstanding any other provision in the Contract Documents, any interest due and payable for payments due and unpaid under the Contract Documents shall be made pursuant to West Virginia Code.

§13.7 TIME LIMITS ON CLAIMS

§13.7 Delete Section 13.7 in its entirety and substitute the following:

Any applicable statute of limitations shall be in accordance with West Virginia Code.

Add the following Sections to Article 13:

§13.8 WORKERS COMPENSATION

The Contractor shall provide proof of compliance with West Virginia Worker's Compensation laws and regulations.

§13.9 CONTRACTOR'S LICENSE

§11.7.1 West Virginia Code §21-11-2 requires that all persons desiring to perform contractual work in West Virginia shall be duly licensed. The West Virginia Contractor's Licensing Board is empowered to issue a contractor's license.

§11.7.2 West Virginia Code §21-11-11 requires any prospective Bidder to include the Bidder's contractor's license number on its Bid. The successful Bidder will be required to furnish a copy of its contractor's license in a classification appropriate to the Work prior to issuance of a purchase order/contract.

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

§14.1 TERMINATION BY THE CONTRACTOR

§14.1.1 Make the following changes in Section 14.1.1:

At the end of clause 14.1.1.3 delete "; or" and insert a period.

Delete clause 14.1.1.4 in its entirety.

§14.1.3 Delete Section 14.1.3 in its entirety and substitute the following:

§14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exist, the Contractor may, upon seven days written notice to the Owner and Architect, terminate the Contract. In such event, the Contractor shall be paid for all Work performed in accordance with the Contract Documents, for reasonable and proven termination expenses and a reasonable allowance for overhead and profit. However, such payment, exclusive of termination expenses, shall not exceed the Contract Sum as reduced by other payments made to the Contractor and further reduced by the value of Work as yet not completed. The Contractor shall be entitled to reasonable overhead, but not profit, on Work not performed.

§14.2 TERMINATION BY THE OWNER FOR CAUSE

§14.2.4 Delete Section 14.2.4 in its entirety and substitute the following:

§14.2.4 If the unpaid balance of the Contract Sum exceeds the cost 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 not 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 Owner shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§14.4.1 Delete Section 14.4.1 in its entirety and substitute the following:

§14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause upon thirty days written notice.

§14.4.3 Delete Section 14.4.3 in its entirety and substitute the following:

§14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment from the Owner on the same basis provided in Section 14.1.3 above.

Add the following Section to Article 14:

§14.5 FISCAL YEAR FUNDING

§14.5 Work performed under this Contract is to continue in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this Work. In the event funds are not appropriated for this Work, this Contract becomes of no effect and is null and void after June 30.

**ARTICLE 15
CLAIMS AND DISPUTES**

§15.2 INITIAL DECISION

§15.2.1 In the third sentence of Section 15.2.1, insert "or litigation" following the word "mediation".

§15.2.5 Delete the last sentence in Section 15.2.5 and substitute the following:

Approval or rejection of a claim by the Initial Decision Maker shall be final and binding on the parties unless it is pursued further by either party in accordance with Section 15.2.6.

§15.2.6 Make the following change to clause 15.2.6.1:

In the last sentence, delete "or pursue binding dispute resolution proceedings."

§15.2.8 Delete Section 15.2.8 in its entirety.

§15.3 MEDIATION

§15.3.1 Delete "binding dispute resolution" and substitute "litigation in a court of competent jurisdiction."

§15.3.2 Delete Section 15.3.2 in its entirety and substitute the following:

§15.3.2 The parties shall endeavor to resolve their Claims by non-binding 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.

§15.4 ARBITRATION

§15.4 Delete Section 15.4 in its entirety and substitute the following:

§15.4 SETTLEMENT OF CLAIMS

§15.4.1 The Constitution of West Virginia grants the State sovereign immunity from any and all Claims against the public treasury. This immunity applies and is extended to all agencies of the State, including the Owner. It shall be in full force and effect as it relates to this Contract. The West Virginia Legislature, recognizing that certain Claims against the State may constitute a moral obligation of the State and should be heard, has established the West Virginia Court of Claims for this purpose. Notwithstanding any provision to the contrary in the Contract Documents, all references to arbitration are hereby deleted and all Claims of the Contractor for monetary relief, and only of the Contractor, arising out of or related to this Contract shall be decided by the West Virginia Court of Claims. The following Sections have been rewritten to bring them into conformance with the foregoing.

§15.4.2 Claims by the Owner may be brought against the Contractor in the Circuit Court of Kanawha County, West Virginia, or in any other court that has jurisdiction, as the Owner may elect.

§15.4.3 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 15.1.6, 9.10.4 and 9.10.5, shall, within 30 days after submission of the decision by the Initial Decision Maker, be settled for the Contractor by the West Virginia Court of Claims or, for the Owner, by the Circuit Court of Kanawha County or any other court of jurisdiction as the Owner may elect.

§15.4.4 Notice of such action shall be filed in writing with the other party to the Contract, and a copy of such notice shall be filed with the Initial Decision Maker and the Architect, if applicable.

§15.4.5 During court proceedings, the Owner and the Contractor shall comply with Section 15.1.3.

§15.4.6 Claims shall be made within the time limits specified in Section 15.2.6.1.

§15.4.7 The party filing a Claim must assert in the demand all Claims then known to that party on which action is permitted.

Add the following Article:

ARTICLE 16 EQUAL OPPORTUNITY

§16.1 COMPLIANCE WITH REGULATIONS UNDER TITLE VI OF THE FEDERAL CIVIL RIGHTS ACT OF 1964 AND EXECUTIVE ORDER 65-2 BY THE GOVERNOR OF WEST VIRGINIA DATED DECEMBER 15, 1965

§16.1.1 The Contractor agrees that it will comply with Title VI of the Federal Civil Rights Act of 1964 (P.L. 88352) and the regulations of the State of West Virginia, to the end that no person in the State, or in the United States, shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity for which the Contractor receives any recompense or other consideration of value, either directly or indirectly from the State, and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this Agreement.

§16.1.2 If any real property or structure thereon is provided or improved, this assurance shall obligate the Contractor, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which any State payment is extended or for another purpose involving the provision of similar services or benefits. If any other goods or services are so provided, this assurance shall obligate the Contractor for the period during which it supplies such goods or services.

§16.1.3 The Contractor recognizes and agrees that such right to provide property, goods or services to the State will be extended in reliance on the representations and agreements made in assurance, and that the State shall have the right to seek judicial enforcement of this assurance. This is binding on the Contractor, its successors, transferees, and assignees, or any authorized person on behalf of the Contractor.

END OF SUPPLEMENTARY CONDITIONS TO AIA DOCUMENT A201-2007

Any provisions of the Contract Documents that conflict with these Supplementary Conditions shall be null and void unless they have been approved in writing by the applicable State purchasing officer and the Attorney General, and are clearly identified as such in the bid documents.

The Owner and Contractor hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF, the Owner and Contractor have entered into this Agreement as of the effective date as stated in the A101-2007 Agreement.

Owner:	Contractor:
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPROVED AS TO FORM THIS 25th DAY OF March, 2010

DARRELL V. MCGRAW, JR., ATTORNEY GENERAL

BY: *James E. Wayfield*
DEPUTY ATTORNEY GENERAL



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

<p>PRODUCER</p> <p>INSURANCE AGENCY'S NAME AND ADDRESS</p>	<p>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</p>																		
<p>INSURED</p> <p>CONTRACTOR'S NAME AND ADDRESS</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">INSURERS AFFORDING COVERAGE</td> <td>NAIC #</td> </tr> <tr> <td>INSURER A:</td> <td>INSURER'S NAME</td> <td></td> </tr> <tr> <td>INSURER B:</td> <td>INSURER'S NAME</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td>INSURER'S NAME</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE		NAIC #	INSURER A:	INSURER'S NAME		INSURER B:	INSURER'S NAME		INSURER C:	INSURER'S NAME		INSURER D:			INSURER E:		
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INSURER C:	INSURER'S NAME																		
INSURER D:																			
INSURER E:																			

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADDL	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (EA OCCUR) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS COMP/AGG \$2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJ <input type="checkbox"/> LOC				
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (EA OCCUR) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC ARG \$
B		EXCESS / UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (W=history in NH) If yes, describe under SPECIAL PROVISIONS below <input type="checkbox"/> Y/N OTHER				<input checked="" type="checkbox"/> W/ STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Employers liability includes coverage for W. Va. Code §23-4-2 (Mandolidis). Owner, Architect and Architect's Consultants are to be named as additional insureds. (Insert project's name and address)

<p>CERTIFICATE HOLDER</p> <p>STATE AGENCY'S NAME AND ADDRESS</p>	<p>CANCELLATION</p> <p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.</p> <p>AUTHORIZED REPRESENTATIVE</p>
--	---

AGORD CERTIFICATE OF PROPERTY INSURANCE DATE

PRODUCER INSURANCE AGENCY'S NAME AND ADDRESS	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. COMPANIES AFFORDING COVERAGE COMPANY A INSURER'S NAME COMPANY B COMPANY C COMPANY D
INSURED CONTRACTOR'S NAME AND ADDRESS	

COVERAGES
 THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	COVERED PROPERTY	LIMITS
	<input type="checkbox"/> PROPERTY <input type="checkbox"/> CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPECIAL <input type="checkbox"/> EARTHQUAKE <input type="checkbox"/> FLOOD				<input type="checkbox"/> BUILDING <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> EXTRA EXPENSE <input type="checkbox"/> BLANKET BUILDING <input type="checkbox"/> BLANKET PERS PROP <input type="checkbox"/> BLANKET BLDG & PP	\$ \$ \$ \$ \$ \$ \$
A	<input checked="" type="checkbox"/> INLAND MARINE TYPE OF POLICY Inst/Builder's Risk <input type="checkbox"/> CAUSES OF LOSS <input type="checkbox"/> NAMED PERILS <input type="checkbox"/> OTHER <input type="checkbox"/> CRIME TYPE OF POLICY	(if applicable)			<input checked="" type="checkbox"/> BUILDING <input checked="" type="checkbox"/> TRANSIT <input checked="" type="checkbox"/> OFF-SITE <input type="checkbox"/> STORAGE	CONTRACT AMT \$ 20% \$ 20% \$ \$ \$ \$
	<input type="checkbox"/> SOLENS & MACHINERY <input type="checkbox"/> OTHER					\$ \$

LOCATION OF PREMISES/DESCRIPTION OF PROPERTY
 PROJECT NAME AND ADDRESS

SPECIAL CONDITIONS/OTHER COVERAGES
 Owner is to be named as additional insured.

CERTIFICATE HOLDER STATE AGENCY'S NAME AND ADDRESS	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY ON ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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SECTION 00300

**D. Performance Bond with Acknowledgment and
Acknowledgment Preparation Instructions**

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____
(Contractor name, complete address including ZIP Code and legal title)

as Principal, hereinafter called Contractor, and _____
(Surety name and complete address including ZIP Code)

_____ a corporation organized and existing under
the laws of the State of _____, with its principal office in the City of _____

as Surety, hereinafter called Surety, are held firmly bound unto _____
(Owner name, complete address including ZIP Code and legal title)

as Obligee, hereinafter called Owner, in the amount of _____

Dollars (_____), for the payment whereof Contractor and Surety bind themselves, their heirs, executors,
administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____
_____ entered into a contract with Owner for _____

_____ in accordance with drawings and specifications prepared by _____

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Contractor shall, promptly and faithfully Perform and CONTRACT,
then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the CONTRACT, the Owner having performed Owner's obligations
thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Complete the CONTRACT in accordance with its terms and conditions, and

2. Shall save the Owner harmless from any claims, judgments, or liens arising from the Surety's failure to either remedy the default or to
complete the CONTRACT in accordance with its terms and conditions in a timely manner.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the successors of
Owner.

Signed and sealed this * _____ day of _____ 20 _____ .

Principal Raised Corporate Seal (MUST BE AFFIXED)

(Contractor Name) (Seal)

BY: _____ (Seal)
(Must be President, Vice President, Owner, Partner, Manager or Member)

(Title)

Surety Raised Corporate Seal (MUST BE AFFIXED)

(Surety)

BY: _____ (Seal)

NOTE: Raised Corporate Seals are mandatory.
Please attach Power of Attorney.

NOTE: Applicable sections of attached acknowledgments must be
completed and returned as part of the bond.

*Power of Attorney must be certified on this date or later.

APPROVED AG 08-20-09

ACKNOWLEDGMENTS

Acknowledgment by Principal if Individual or Partnership

1. STATE OF _____
2. County of _____ to-wit:
3. I, _____, a Notary Public in and for the
4. county and state aforesaid, do hereby certify that _____
whose name is signed to the foregoing writing, has this day acknowledged the same before me in my said county.
5. Given under my hand this _____ day of _____ 20_____
6. Notary Seal _____ 7. _____
(Notary Public)
8. My commission expires on the _____ day of _____ 20_____

Acknowledgment by Principal if Corporation

9. STATE OF _____
10. County of _____ to-wit:
11. I, _____, a Notary Public in and for the
12. county and state aforesaid, do hereby certify that _____
13. who as, _____ signed the foregoing writing for
14. _____ a corporation,
has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
15. Given under my hand this _____ day of _____ 20_____
16. Notary Seal _____ 17. _____
(Notary Public)
18. My commission expires on the _____ day of _____ 20_____

Acknowledgment by Surety

19. STATE OF _____
20. County of _____ to-wit:
21. I, _____, a Notary Public in and for the
22. county and state aforesaid, do hereby certify that _____
23. who as, _____ signed the foregoing writing for
24. _____ a corporation,
has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
25. Given under my hand this _____ day of _____ 20_____
26. Notary Seal _____ 27. _____
(Notary Public)
28. My commission expires on the _____ day of _____ 20_____

Sufficiency in Form and Manner of Execution Approved

Attorney General

This _____ day of _____ 20_____

By: _____

(Deputy Attorney General)

ACKNOWLEDGMENT PREPARATION INSTRUCTIONS

1. IF PRINCIPAL IS AN INDIVIDUAL OR PARTNERSHIP, HAVE NOTARY COMPLETE LINES (1) THROUGH (8).
2. IF PRINCIPAL IS A CORPORATION, HAVE NOTARY COMPLETE LINES (9) through (18).
3. SURETY MUST HAVE NOTARY COMPLETE LINES (19) through (28).
4. **Notaries must:**

ACKNOWLEDGMENT BY PRINCIPAL, IF INDIVIDUAL OR PARTNERSHIP

1. Enter name of State.
2. Enter name of County.
3. Enter name of Notary Public witnessing transactions.
4. Enter name of principal covered by bond if individual or partnership. (Must be Owner or General Partner of Sole Proprietorship or Partnership)
5. Notary enters date bond was witnessed. Must be the same as or later than signature date.
6. Affix Notary Seal.
7. Notary affixes his/her signature.
8. Notary enters commission expiration date.

ACKNOWLEDGMENT BY PRINCIPAL IF CORPORATION

9. Enter name of State.
10. Enter name of County.
11. Enter name of Notary Public witnessing transactions.
12. Enter name of Corporate Officer signing bond.
13. Enter Title of Corporate Officer signing bond. (Must be President or Vice President of Corporation; Manager or Managing Member of Limited Liability Company)
14. Enter name of Company or Corporation.
15. Notary enters date bond was witnessed. Must be the same as or later than signature date.
16. Affix notary Seal.
17. Notary affixes his/her signature.
18. Notary enters commission expiration date.

ACKNOWLEDGMENT BY SURETY

19. Enter name of State.
20. Enter name of County.
21. Enter name of Notary Public witnessing transactions.
22. Enter name of person having power of attorney to bind Surety Company.
23. Enter Title of person binding Surety Company.
24. Enter name of Insurance Company (Surety).
25. Notary enters date bond was witnessed. Must be the same as or later than signature date.
26. Affix Notary Seal.
27. Notary affixes his/her signature.
28. Notary enters commission expiration date.

POWER OF ATTORNEY INSTRUCTIONS

Power of attorney for surety must be attached showing that it was in full force and effect on signature date indicated on the face of the bond. A raised corporate seal must also be affixed to the Power of Attorney form.

- a. Name of attorney in fact must be listed.
- b. Power of Attorney may not exceed imposed limitations.
- c. Certificate date, the signature date of bond must be entered.
- d. Signature of authorizing official must be affixed. (Signature may be facsimile).
- e. **Raised seal must be affixed.**

SECTION 00300

**E. Labor and Material Bond with Acknowledgment and
Acknowledgment Preparation Instructions**

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____
(Contractor name, complete address including ZIP Code and legal title)
as Principal, hereinafter called Contractor, and _____
(Surety name and complete address including ZIP Code)
_____ a corporation organized and existing under
the laws of the State of _____, with its principal office in the City of _____
as Surety, hereinafter called Surety, are held firmly bound unto _____
(Owner name, complete address including ZIP Code and legal title)

as Obligee, hereinafter called Owner, for the use and benefit of claimants as herein below defined in the amount of _____ Dollars (_____),
for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally,
firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____
_____ entered into a contract with Owner for
_____ in accordance with drawings and specifications prepared by _____

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT.
NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Contractor shall, well and truly perform the contract, and shall pay off,
satisfy and discharge all claims of subcontractors, labors, materialmen and all persons furnishing material or doing work pursuant to the
CONTRACT and shall save Owner and its property harmless from any and all liability over and above the contract price thereof, between the Owner
and the Contractor, for all of such labor and material, and shall fully pay off and discharge and secure the release of any and all mechanics liens
which may be placed upon said property by any such subcontractor, laborer or materialmen, then this obligation shall be null and void. Otherwise, it
shall remain in full force and effect.

Signed and sealed this * _____ day of _____ 20 _____

Principal Raised Corporate Seal (MUST BE AFFIXED) _____ (Seal)
(Contractor Name)

BY: _____ (Seal)
(Must be President, Vice President, Owner, Partner, Manager or Member)

Surety Raised Corporate Seal (MUST BE AFFIXED) _____ (Title)

BY: _____ (Seal)
(Surety)

NOTE: Raised Corporate Seals are mandatory.
Please attach Power of Attorney.

NOTE: Applicable sections of attached acknowledgments
must be completed and returned as part of the bond.

*Power of Attorney must be certified on this date or later.

ACKNOWLEDGMENTS

Acknowledgment by Principal if individual or Partnership

1. STATE OF _____
2. County of _____ to-wit: _____
3. I, _____, a Notary Public in and for the
4. county and state aforesaid, do hereby certify that _____
whose name is signed to the foregoing writing, has this day acknowledged the same before me in my said county.
5. Given under my hand this _____ day of _____ 20 _____
6. Notary Seal _____ 7: _____
(Notary Public)
8. My commission expires on the _____ day of _____ 20 _____

Acknowledgment by Principal if Corporation

9. STATE OF _____
10. County of _____ to-wit: _____
11. I, _____, a Notary Public in and for the
12. county and state aforesaid, do hereby certify that _____
13. who as, _____ signed the foregoing writing for
14. _____ a corporation,
has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
15. Given under my hand this _____ day of _____ 20 _____
16. Notary Seal _____ 17: _____
(Notary Public)
18. My commission expires on the _____ day of _____ 20 _____

Acknowledgment by Surety

19. STATE OF _____
20. County of _____ to-wit: _____
21. I, _____, a Notary Public in and for the
22. county and state aforesaid, do hereby certify that _____
23. who as, _____ signed the foregoing writing for
24. _____ a corporation,
has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
25. Given under my hand this _____ day of _____ 20 _____
26. Notary Seal _____ 27: _____
(Notary Public)
28. My commission expires on the _____ day of _____ 20 _____

Sufficiency in Form and Manner of Execution Approved

Attorney General

This _____ day of _____ 20 _____

By: _____
(Deputy Attorney General)

ACKNOWLEDGMENT PREPARATION INSTRUCTIONS

1. IF PRINCIPAL IS AN INDIVIDUAL OR PARTNERSHIP, HAVE NOTARY COMPLETE LINES (1) THROUGH (8).
2. IF PRINCIPAL IS A CORPORATION, HAVE NOTARY COMPLETE LINES (9) through (18).
3. SURETY MUST HAVE NOTARY COMPLETE LINES (19) through (28).
4. **Notaries must:**

ACKNOWLEDGMENT BY PRINCIPAL, IF INDIVIDUAL OR PARTNERSHIP

1. Enter name of State.
2. Enter name of County.
3. Enter name of Notary Public witnessing transactions.
4. Enter name of principal covered by bond if individual or partnership. (Must be Owner or General Partner of Sole Proprietorship or Partnership)
5. Notary enters date bond was witnessed. Must be the same as or later than signature date.
6. Affix Notary Seal.
7. Notary affixes his/her signature.
8. Notary enters commission expiration date.

ACKNOWLEDGMENT BY PRINCIPAL IF CORPORATION

9. Enter name of State.
10. Enter name of County.
11. Enter name of Notary Public witnessing transactions.
12. Enter name of Corporate Officer signing bond.
13. Enter Title of Corporate Officer signing bond. (Must be President or Vice President of Corporation; Manager or Managing Member of Limited Liability Company)
14. Enter name of Company or Corporation.
15. Notary enters date bond was witnessed. Must be the same as or later than signature date.
16. Affix notary Seal.
17. Notary affixes his/her signature.
18. Notary enters commission expiration date.

ACKNOWLEDGMENT BY SURETY

19. Enter name of State.
20. Enter name of County.
21. Enter name of Notary Public witnessing transactions.
22. Enter name of person having power of attorney to bind Surety Company.
23. Enter Title of person binding Surety Company.
24. Enter name of Insurance Company (Surety).
25. Notary enters date bond was witnessed. Must be the same as or later than signature date.
26. Affix Notary Seal.
27. Notary affixes his/her signature.
28. Notary enters commission expiration date.

POWER OF ATTORNEY INSTRUCTIONS

Power of attorney for surety must be attached showing that it was in full force and effect on signature date indicated on the face of the bond. A raised corporate seal must also be affixed to the Power of Attorney form.

- a. Name of attorney in fact must be listed.
- b. Power of Attorney may not exceed imposed limitations.
- c. Certificate date, the signature date of bond must be entered.
- d. Signature of authorizing official must be affixed. (Signature may be facsimile).
- e. **Raised seal must be affixed.**

SECTION 00300

- F. Acord Certificate of Liability Insurance with
Minimum Amounts for the
Construction Project**

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)

PRODUCER
Insurance Agency Name & Address

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
Contractor's Name & Address

INSURER A: Insuring Company
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	Contractor's Policy Number			EACH OCCURRENCE \$ 1,000,000
					FIRE DAMAGE (Any one fire) \$ 50,000
					MED EXP (Any one person) \$ 5,000
					PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				GENERAL AGGREGATE \$ 2,000,000
					PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
					BODILY INJURY (Per person) \$
					BODILY INJURY (Per accident) \$
					PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$
					OTHER THAN EA ACC \$
					AUTO ONLY: AGG \$
	EXCESS LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ 5,000,000
					AGGREGATE \$ 5,000,000
					\$
					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS OTHER
					E.L. EACH ACCIDENT \$ 500,000
					E.L. DISEASE - EA EMPLOYEE \$ 500,000
					E.L. DISEASE - POLICY LIMIT \$ 500,000
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
Employers Liability includes coverage for WV Code 23-4-2 (Mandolidis)
Include Project Name & Location

CERTIFICATE HOLDER Institution's Name & Address

ADDITIONAL INSURED; INSURER LETTER:

CANCELLATION

Institution's Name & Address

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ~~SEND~~ MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~BY FAX OR BY REGISTERED MAIL~~
~~BY FAX OR BY REGISTERED MAIL~~
~~BY FAX OR BY REGISTERED MAIL~~
AUTHORIZED REPRESENTATIVE

ACORD™ CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YY)

PRODUCER Insurance Agency Name & Address	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. INSURERS AFFORDING COVERAGE
INSURED Contractor's Name & Address	INSURER A: Insuring Company INSURER B: INSURER C: INSURER D: INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Owner's & Contractors Protective GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 Project Name and Location must appear here

CERTIFICATE HOLDER Institution's Name & Address	ADDITIONAL INSURED; INSURER LETTER: _____
CANCELLATION	
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL SEND BY MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BY FAILURE TO DO SO SHALL THE POLICY BE CANCELLED AND THE INSURER SHALL NOT BE RESPONSIBLE FOR ANY CLAIMS OR DAMAGES THAT MAY BE INCURRED BY THE INSURED. _____ AUTHORIZED REPRESENTATIVE	

ACORD™ CERTIFICATE OF PROPERTY INSURANCE

DATE (MM/DD/YY)

PRODUCER

Insurance Agency Name & Address

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY

A Insuring Company

INSURED

Contractor's Name & Address

COMPANY

B

COMPANY

C

COMPANY

D

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	COVERED PROPERTY	LIMITS
	<input type="checkbox"/> PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPECIAL <input type="checkbox"/> EARTHQUAKE <input type="checkbox"/> FLOOD				<input type="checkbox"/> BUILDING <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> EXTRA EXPENSE <input type="checkbox"/> BLANKET BUILDING <input type="checkbox"/> BLANKET PERS PROP <input type="checkbox"/> BLANKET BLDG & PP	\$ \$ \$ \$ \$ \$ \$
A	<input checked="" type="checkbox"/> INLAND MARINE TYPE OF POLICY Inst/Builders Risk CAUSES OF LOSS <input type="checkbox"/> NAMED PERILS <input checked="" type="checkbox"/> OTHER Special				<input checked="" type="checkbox"/> Building <input checked="" type="checkbox"/> Transit <input checked="" type="checkbox"/> Off Site Stor <input checked="" type="checkbox"/> Deductible	\$ Contract Amt. \$ 20% \$ 20% \$ 500
	<input type="checkbox"/> CRIME TYPE OF POLICY					\$ \$ \$
	<input type="checkbox"/> BOILER & MACHINERY					\$
	<input type="checkbox"/> OTHER					\$

LOCATION OF PREMISES/DESCRIPTION OF PROPERTY

SPECIAL CONDITIONS/OTHER COVERAGES

Project must be identified in this space

CERTIFICATE HOLDER

Institution's Name & Address

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ~~SEND BY MAIL~~ 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT,

AUTHORIZED REPRESENTATIVE

SECTION 00300

G. Purchasing Affidavit

RFQ No. _____

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (*West Virginia Code* §61-5-3), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

WITNESS THE FOLLOWING SIGNATURE

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ___ day of _____, 20__.

My Commission expires _____, 20__.

AFFIX SEAL HERE

NOTARY PUBLIC _____

SECTION 00300

H. Preference for Use of Domestic Steel Products

PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS

1. Except when authorized by the director of the Purchasing Division pursuant to subsection 2 below, no contractor may use or supply steel products for a state contract project other than those steel products made in the United States. As used in this contract,
 - a. "State contract project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of any materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
 - b. "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made by the open hearth, basic oxygen, electric furnace, bessemer or other steel making process.
 - c. "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.
2. The director of the Purchasing Division may, in writing, authorize the use of foreign steel products if:
 - a. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
 - b. The director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.
3. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56.

SECTION 00300

**I. State of West Virginia Drug Free Workplace
Conformance Affidavit**



**State of West Virginia
DRUG FREE WORKPLACE CONFORMANCE AFFIDAVIT
West Virginia Code §21-1D-5**

STATE OF _____

COUNTY OF _____, **TO-WIT:**

I, _____, after being first duly sworn, depose and state as follows:

1. I am an employee of _____; and,
(Company Name)

2. I do hereby attest that _____
(Company Name)

maintains a valid written drug free workplace policy and that such policy is in compliance with **West Virginia Code §21-1D-5**.

The above statements are sworn to under the penalty of perjury.

(Company Name)

By: _____

Title: _____

Date: _____

Taken, subscribed and sworn to before me this _____ day of _____.

By Commission expires _____

(Seal)

(Notary Public)

THIS AFFIDAVIT MUST BE SUBMITTED WITH THE BID IN ORDER TO COMPLY WITH WV CODE PROVISIONS. FAILURE TO INCLUDE THE AFFIDAVIT WITH THE BID SHALL RESULT IN DISQUALIFICATION OF THE BID.

SECTION 00300

J. Vendor Registration and Disclosure Statement

STATE OF WEST VIRGINIA - PURCHASING DIVISION

**VENDOR REGISTRATION AND DISCLOSURE STATEMENT
AND SMALL, WOMEN-, AND MINORITY-OWNED BUSINESS
CERTIFICATION APPLICATION**

Before a vendor is eligible to sell goods and/or services to the State of West Virginia, the *West Virginia Code* §5A-3-12 requires all vendors to have on file with the West Virginia Purchasing Division a completed Vendor Registration and Disclosure Statement. All vendors wishing to participate in the competitive bid process and receive purchase orders from the State of West Virginia exceeding \$1,000 are required to complete the Vendor Registration and Disclosure Statement (WV-1 form) and pay a **\$125.00** annual fee. Payment of the annual fee includes email notifications on bid opportunities based on the commodities and services selected upon registering in the Vendor Self-Service (VSS) portal at *wvOASIS.gov*. Please complete this form in its **ENTIRETY** and return it with a check or money order made payable to the **STATE OF WEST VIRGINIA** in the amount of **\$125.00**. Incomplete forms will not be processed and will be returned to the vendor. Please send completed form and payment to:

**Purchasing Division - Vendor Registration
2019 Washington Street East
Charleston, WV 25305-0130**

Whenever a change occurs in the information submitted, such change shall be reported immediately in the same manner as required in the original disclosure statement (*West Virginia Code* §5A-3-12). Vendors doing business with the State of West Virginia are expected to abide by the **Vendor Code of Conduct** available online at <http://www.state.wv.us/admin/purchase/vrc/vendorconduct.pdf>.

Privacy Notice: The Purchasing Division is required to collect certain information as stated in *West Virginia Code* §5A-3-12, other applicable sections of the *West Virginia Code*, the Vendor Registration and Disclosure Statement forms, and other documents to facilitate the state bidding and contract administration processes. This information is stored in a secure environment, but unless specifically protected under state law, any information provided may be inspected by or disclosed to the public.

Vendors are also required to be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or other state agencies or political subdivisions. Failure to do so may result in delay of or disqualification from a contract award pursuant to *West Virginia Code of State Rules* §148-1-6.1.7. If you have any questions concerning this Vendor Registration and Disclosure Statement, please contact the Purchasing Division at (304) 558-2311.

PLEASE TYPE OR CLEARLY PRINT ALL INFORMATION
To Be Completed by the Vendor and Returned to the Purchasing Division

1. Legal Name of Company/Individual _____
DBA, if any _____
Bidding Address _____

City, State, Zip _____
Principle Contact Person _____ E-mail _____
Telephone Number _____ Fax Number _____

VENDOR REGISTRATION AND DISCLOSURE STATEMENT AND SMALL, WOMEN-, AND MINORITY-OWNED BUSINESS CERTIFICATION APPLICATION

PLEASE TYPE OR CLEARLY PRINT ALL INFORMATION
To Be Completed by the Vendor and Returned to the Purchasing Division

2. Vendor Classified As:

- | | |
|--|--|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Government |
| <input type="checkbox"/> Sole Proprietor | <input type="checkbox"/> Medical Corporation |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Attorney Corporation |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Non-Profit Organization |
| <input type="checkbox"/> Board Member | <input type="checkbox"/> Payroll |
| <input type="checkbox"/> Trust | <input type="checkbox"/> Employee |
| <input type="checkbox"/> Estate | |

3. Taxpayer Identification Number (TIN): If you have an Identification Number, enter it below. All partnerships, corporations, or companies with employees must have an EIN.

EIN

If you do not have a EIN, please enter Social Security Number (SSN), Individual Taxpayer Identification Number (ITIN) or Adoptive Identification Number (ATIN) and check the correct below.

- (SSN , ITIN , ATIN)

4. (A) **Small, Women-Owned, Minority-Owned Businesses**

West Virginia Code §5A-3-59 establishes a procurement certification program in West Virginia for small, women-, and minority-owned businesses. Requirements related to the certification program are provided in the **West Virginia Code of State Rules** §148-2-1 et seq. Note that this certification provides nonresident vendors preference that is equivalent to competing resident (West Virginia) vendors that have applied for resident vendor preference, in accordance with **West Virginia Code** §5A-3-37. This certification may assist resident small, women-, and minority-owned businesses when soliciting business in other states.

Certification of Status (Check all those which apply)

- Minority-owned Business** [1] means a business concern that is at least fifty-one percent owned by one or more minority individuals or in the case of a corporation, partnership, or limited liability company or other entity, at least fifty-one percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.
- A “minority individual” means an individual who is a citizen of the United States or a noncitizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:
 - **African American** means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

VENDOR REGISTRATION AND DISCLOSURE STATEMENT AND SMALL, WOMEN-, AND MINORITY-OWNED BUSINESS CERTIFICATION APPLICATION

PLEASE TYPE OR CLEARLY PRINT ALL INFORMATION
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- **Asian American** means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands, including, but not limited to, Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
- **Hispanic American** means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
- **Native American** means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

Small Business [2] means a business, independently owned or operated by one or more persons who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, which, together with affiliates, has two hundred fifty or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.

Women-owned Business [3] means a business concern that is at least fifty-one percent owned by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least fifty-one percent of the equity ownership interest is owned by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law.

(B) Other Federal Designations

Additionally, by providing the following information, I represent that this enterprise is a small business as defined by the **Code of Federal Regulations**, Title 13, Part 121, as appended - which contains detailed industry definitions and related procedures - and/or the characteristics of the enterprise's control, operation and/or ownership are accurately reflected in the information provided. *Check all that apply.*

- Disabled Small Business Ownership [4]
- Veteran Small Business Ownership [5]

5. Are you registering as a new vendor with the Purchasing Division? No Yes

6. Are you updating the information previously submitted? No Yes

VENDOR REGISTRATION AND DISCLOSURE STATEMENT AND SMALL, WOMEN-, AND MINORITY-OWNED BUSINESS CERTIFICATION APPLICATION

PLEASE TYPE OR CLEARLY PRINT ALL INFORMATION
To Be Completed by the Vendor and Returned to the Purchasing Division

7. Are you completing this form to register a branch/division/subsidiary? No Yes

8. Is the Legal Company's address the same for ordering and payment? No Yes

If the ordering or payment addresses are different for the Parent Company or the branches, divisions or subsidiaries, please enter this information below:

Ordering Payment

Address: _____

City, State, Zip: _____

Ordering Payment

Address: _____

City, State, Zip: _____

9. **Commodity Codes:** You may register for commodity codes for the products and services that you offer, which will provide you with bid opportunity alerts and notifications should you become a paid registered vendor. To perform this function, visit the Vendor Self-Service (VSS) Portal at wvOASIS.gov.

10. **List the name, title, city and state of residence for all owners/officers.** If the vendor is an **individual**, list his or her name and city and state of residence, and, if he or she has associates or partners sharing in his or her business, list their names and city and state of residence. If the vendor is a **firm**, list the name and city and state of residence of each member, partner or associate of the firm. If the vendor is a **corporation** created under the laws of this state or authorized to do business in this state, list the names and city and state of residence of the president, vice president, secretary, treasurer and general manager, if any, of the corporation; and the names and city and state of residence of each stockholder of the corporation owning or holding at least ten percent of the capital stock thereof. Attach an additional sheet if space is needed.

Name

Position

City and State of Residence

Name	Position	City and State of Residence

If the vendor has only one owner/officer, list the name, position, and city and state of residence above and please initial here: _____

VENDOR REGISTRATION AND DISCLOSURE STATEMENT AND SMALL, WOMEN-, AND MINORITY-OWNED BUSINESS CERTIFICATION APPLICATION

PLEASE TYPE OR CLEARLY PRINT ALL INFORMATION
To Be Completed by the Vendor and Returned to the Purchasing Division

11. List the name and telephone number of one or more banking institutions to serve as reference for the vendor.

12. What is the latest Dun & Bradstreet number and rating on the vendor? _____

13. Is the vendor acting as an agent for some other individual, firm or corporation? If yes, attach statement of the principal authorizing such representation. No Yes

By signing below and submitting this form, the vendor certifies and acknowledges that: 1) it has obtained all licenses, certifications, and authorizations necessary to lawfully conduct business in the state of West Virginia; and 2) that the assertions made by completing this form and delivering it to the Purchasing Division are accurate and true in accordance with the applicable law and rules. As authorized agent of the vendor named herein, I do solemnly swear that the above information is true and complete, in accordance with **West Virginia Code** §5A-3-12(e).

In the event that the vendor is applying for certification as a small, women-, or minority-owned business, the vendor's signature below further certifies that: 1) the state in which the vendor has its headquarters or principal place of business does not deny a like certification to a West Virginia based small, women-owned, or minority-owned business; 2) the state in which the vendor has its headquarters or principal place of business does not provide a preference to small, women-owned, or minority-owned firms that is unavailable to West Virginia based businesses; and, 3) that it has read and understands this form, along with the law and rules governing certification as a small, women-owned, or minority-owned business.

Authorized Agent of Vendor (Print Name)

Authorized Agent (Signature)

Title

Date

**PURCHASING DIVISION
USE ONLY**

Vendor ID: _____

Check No. : _____

Memo No. : _____

Date: _____

Entered by: _____

SECTION 00400
2015 WAGE RATES JEFFERSON CO.

WEST VIRGINIA DIVISION OF LABOR
Building Construction Wage Rates

FILED

Jefferson County
2015

20 JUN -2 A 8:47

CLASSIFICATION	BASIC HOURLY RATE	FRINGE BENEFITS
ASBESTOS & LEAD ABATEMENT WORKER	20.86	5.41
ASBESTOS/FIRE STOP TECHNICIAN	26.06	5.85
BOILERMAKER	37.38	23.72
BRICKLAYER	27.12	18.89
BRICKLAYER - POINTER/CAULKER/CLEANER	27.12	18.89
CARPENTER	26.45	15.40
CARPET LAYER	26.45	15.40
CEMENT MASON	25.53	14.53
DRYWALL HANGER	26.45	15.40
ELECTRICIAN	30.50	15.78
ELEVATOR HELPER	28.34	27.08
ELEVATOR MECHANIC	40.49	27.08
GLAZIER	30.00	8.35
INSULATOR	33.13	14.04
IRON WORKER BUCKER-UP *	28.83	16.52
IRON WORKER ERECTOR *	28.58	16.52
IRON WORKER FENCE ERECTOR *	28.58	16.52
IRON WORKER JOURNEYMAN *	28.58	16.52
IRON WORKER REINFORCING *	28.58	16.52
IRON WORKER STRUCTURAL *	28.58	16.52
LABORER CLASS I *	21.39	15.45
LABORER CLASS II *	21.03	15.45
LABORER CLASS III *	21.03	15.45
LABORER FLAGMAN	18.68	15.45
LATHER	26.45	15.40
MARBLE FINISHER	22.26	17.51
MARBLE SETTER	27.12	18.89
MILLWRIGHT	27.05	15.40
OPERATING ENGINEER 1 *	35.51	19.38
OPERATING ENGINEER 2 *	35.16	19.38
OPERATING ENGINEER 3 *	34.16	19.38
OPERATING ENGINEER 4 *	23.66	19.38
PAINTER	25.37	14.18
PILEDRIVER	26.96	15.40
PLASTERER	25.53	14.35
PLUMBER/FITTER	36.54	17.49
ROOFER/HEATED COAL TAR PRODUCTS	27.25	9.15
ROOFER/WATER DAMP PROOFER	27.25	9.15
SHEET METAL WORKER	27.36	19.15
SOFT FLOOR LAYER	26.45	15.40
SPRINKLER FITTER	31.39	18.72
STONE MASON	27.12	18.89
TEAMSTER CLASS 1	21.08	17.01

WEST VIRGINIA DIVISION OF LABOR
Building Construction Wage Rates

Jefferson County
2015

CLASSIFICATION	BASIC HOURLY RATE	FRINGE BENEFITS
TEAMSTER CLASS 2	21.31	17.01
TEAMSTER CLASS 3	21.59	17.01
TEAMSTER CLASS 4	21.84	17.01
TEAMSTER CLASS 5	22.19	17.01
TEAMSTER CLASS 6	22.54	17.01
TEAMSTER CLASS 7	22.91	17.01
TERRAZZO - TILE FINISHER	22.26	17.51
TERRAZZO - TILE SETTER	27.12	18.89

APPRENTICE RATIO: General apprenticeship ratio = 3 to 1. Any other ratios must be verified by contacting Federal Bureau of Apprenticeship and Training at www.dol.gov or by calling (304)347-5794

SECTION 00500
DRAWING INDEX

DRAWING INDEX

CS-1 Cover Sheet

ARCHITECTURAL

D1.0 Lower Level Floor Plan & Details – Demolition
D1.1 First Floor Plan – Demolition
D1.2 Second Floor Plan – Demolition
D1.3 Third Floor Plan – Demolition

D3.1 Building Elevations – Demolition
D3.2 Building Elevations – Demolition

A1.0 Lower Level Floor Plan – New Work
Window Types & Details
A1.1 First Floor Plan – New Work
A1.2 Second Floor Plan – New Work
A1.3 Third Floor Plan – New Work
Door Schedule and Door & Frame Elevations
A3.1 Building Elevations – New Work
A3.2 Building Elevations – New Work