

February 2013

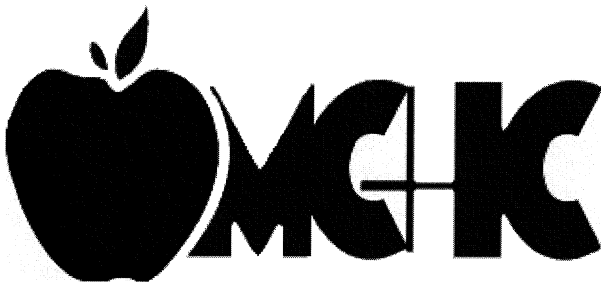
PROJECT MANUAL

Set Number

Mountain Comprehensive Health Corporation

LEATHERWOOD/BLACKKEY CLINIC RENOVATION

464 KY HIGHWAY 699
CORNETTSVILLE, KENTUCKY 41731



Omni Architects

212 North Upper Street, Lexington, Ky 40507-1001
p 859.252.6664

SHROUT TATE WILSON, MECHANICAL - ELECTRICAL ENGINEERS
628 Winchester Road, Lexington, KY 40505, p.859.277.8177

BROWN & KUBICAN, STRUCTURAL ENGINEERS
2224 Young Drive, Lexington, KY 40505, p.859.543.0933

AIR SOURCE TECHNOLOGY, HAZARDOUS MATERIALS CONSULTANTS
160 Prosperous Place, Lexington, KY 40509, p.859.299.0046

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Invitation to Bid

Mountain Comprehensive Health Corporation
226 Medical Plaza Lane
Whitesburg, Kentucky 41858
(606) 633-4823

The Mountain Comprehensive Health Corporation, Whitesburg, Kentucky will receive bids from qualified contractors on a General Construction Contract, including mechanical and electrical work for the renovation of the Leatherwood/Blackey Clinic, located at 464 KY Highway 699, Cornettsville, Kentucky 41731, which contains approximately 10,300 gross square feet.

An authorized agent of the Owner will receive bids until 2:00 p.m. Local Time on Tuesday, March 19, 2013 at Mountain Comprehensive Health Corporation, 226 Medical Plaza Lane, Administration Building Conference Room, Whitesburg, Kentucky 41858, Attention Mike Caudill, Director. Bids received after time will not be accepted.

Bidders will be given bid results after review and acceptance by the Owner.

Drawings and Specifications may be examined at the office of the Architect and at other locations as listed below:

Omni Architects
212 North Upper Street
Lexington, Kentucky 40507
(859) 252-6664

Structural Engineering
Brown & Kubican
2224 Young Drive
Lexington, Kentucky 40505

Mechanical & Electrical Engineering
Shrout Tate Wilson
628 Winchester Road
Lexington, Kentucky 40505
(859) 277-8177

Associated General Contractors of Kentucky
632 Comanche Trail
Frankfort, Kentucky 40601
(502) 223-8845

F.W. Dodge
2321 Fortune Drive
Lexington, Kentucky 40509
(859) 425-6630

On or about February 19, 2013 complete sets of Contract Documents may be purchased at Lynn Imaging, 328 Old Vine Street, Lexington, Kentucky 40507, (859) 255-1021. No partial sets will be issued. Checks should be made out to Mountain Comprehensive Health Corporation.

A separate and additional cost will be charged for postage and handling for sets to be mailed. Provide a separate payment for this mailing service if requested. Checks should be made out to Lynn Imaging. The cost of sets is non-refundable.

A preconstruction conference will be held on site at 10:30 a.m. on Tuesday, March 5, 2013.

Bid Bonds, in the full amount of the Contract, will also be required.

Bidders must submit the bond premium cost with the proposal.

The Mountain Comprehensive Health Corporation reserves the right to waive irregularities and to reject bids.

No bid shall be withdrawn for a period of **forty-five (45)** days subsequent to the opening of the bids without consent of the Owner.

Omni Architects
212 North Upper Street
Lexington, Kentucky 40507
(859) 252-6664

Mountain Comprehensive Health Corporation
226 Medical Plaza Lane
Whitesburg, Kentucky 41858
(606) 633-4828

Instructions to Bidders

Mountain Comprehensive Health Corporation
226 Medical Plaza Lane
Whitesburg, Kentucky 41858

GENERAL CONTRACT. Refer to Invitation to Bid.

EXAMINATION. Bidders shall carefully examine the Bid Documents, Contract Documents, and the construction site to obtain first-hand knowledge of the Project, the Work, and existing conditions.

QUESTIONS. Submit all questions about Drawings and Specifications to the Architect in writing. Replies will be issued to all accepted prime bidders of record as Addenda to the Drawings and Specifications and will become part of the Contract. Questions received less than 72 hours before the bid opening cannot be answered.

PRE-BID CONFERENCE. At the time and place announced in the Invitation to Bid, the Architect will conduct a Pre-Bid Conference for the benefit of all Bidding Contractors. Representatives of the Architect and Consulting Engineers will be available to point out aspects of the project and site. They will also receive questions pertaining to the project. Questions which require an interpretation or change in the Contract Documents will be answered in the form of written addenda.

SUBSTITUTIONS. The materials, products, and equipment described in the Contract Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution. To obtain approval to use unspecified products bidders shall submit written requests at least ten (10) days before the bid date and hour. Requests received after this time will not be considered. Requests shall clearly describe the product for which approval is asked, including all data necessary to demonstrate acceptability. The burden of proof of the merit of the proposed substitution is upon the proposer. If the product is acceptable, the Architect will approve it in an Addendum issued to all prime bidders on record. No requests should be made that will impact schedule.

ADDENDA. Addenda will be mailed or delivered to all who are known by the issuing office to have received a complete set of Bidding Documents. 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.

BID SECURITY. Bid security shall be made payable to the Owner, in the amount of five percent (5%) of the bid sum. Security shall be either certified check or bid bond issued by surety licensed to conduct business in the State of Kentucky. The successful bidder's security will be retained until he has signed the Contract and furnished the required payment and performance bonds. The Owner reserves the right to retain the security of the next two lowest bidders until the lowest bidder enters into contract or until thirty (30) days after the bid opening whichever is shorter. All other bid security will be returned as soon as is practicable. If any bidder refuses to enter into a Contract, the Owner will retain his Bid Security as liquidated damage, but not as penalty.

BASIS OF BID. The bidder must include all unit cost and material list items shown on the Bid Form; failure to comply may be cause for rejection. No segregated bids or assignments will be considered. The contract will be awarded on the basis of the best bid.

EXECUTION OF CONTRACT. The Owner reserves the right to accept any Bid, and to reject any and all Bids, or to negotiate Contract Terms with the various Bidders, when such is deemed by the Owner to be in his best interest.

Each bidder must be prepared, if so requested by the Owner, to present evidence of his experience, qualification, and financial ability to carry out the terms of the Contract.

Notwithstanding any delay in the preparation and execution of the formal Contract Agreement, each Bidder shall be prepared, upon written notice of Bid acceptance, to commence work within fifteen (15) days following receipt of official written order of the Owner to proceed, or on date stipulated in such order.

CONSTRUCTION TIME. Bidders shall be aware that the date of substantial completion is established as One Hundred Thirty-five (135) calendar days from date of contract, and Final Completion of the Work within One Hundred Eighty (180) days of same agreement. (Refer to phasing description in Summary Section.)

LIQUIDATED DAMAGES. Refer to the Supplementary Conditions for determinations on Liquidated Damages.

UNIT PRICES. All Bidders must include pricing for all unit prices requested in the enclosed Bid Form which are applicable to their scope of work.

LIST OF MATERIALS AND EQUIPMENT. All bidders must include a list of materials and equipment requested in the enclosed Bid Form which are applicable to their scope of work.

SUBMITTAL. Submit bid and subcontractor listing in an opaque, sealed envelope. Identify the envelope with (1) project name and (2) name of bidder. Submit bid in accord with Invitation to Bid.

BID MODIFICATION OR WITHDRAWAL. In submitting a bid, each bidder agrees not to modify, cancel, or withdraw their Bid for a period of forty-five (45) days subsequent to the Bid Opening without the written consent of the Owner.

DISQUALIFICATION. The Owner reserves the right to disqualify Bids, before or after opening, upon evidence of collusion with intent to defraud or other illegal practices upon the part of the Bidder.

GOVERNING LAWS AND REGULATIONS. Contracts for work under the Bid will oblige the Contractor and Subcontractors to adhere to and comply with all applicable state, federal, county and city governing laws and regulations.

OPENING. Bids will be privately opened as announced in the Invitation to Bid.

AWARD. The Contract will be awarded on the basis of the best bid received from qualified bidders including full consideration of unit prices. Owner will retain his Bid Security as liquidated damage, but not as penalty.

PERFORMANCE AND LABOR MATERIAL BONDS. Each bidder, must accompany his bid with signed certificate from a Surety Company acceptable to the Owner, that such surety company will provide the bidder, if awarded the Contract, with a proper Performance and Payment Bond, covering to the full amount of the Contract Price as security for the faithful performance of all work under the Contract and payment of all charges in connection therewith. Cost of said bond shall be included in the Base Bid.

LIST OF SUBCONTRACTORS. Names of principal subcontractors must be listed on the form provided and faxed to Omni Architects at 859-253-2358 within one hour of bid date and time.

PREPARATION OF BIDS. Bids shall be submitted on forms identical to the Bid Form included in the Bidding Documents. Fill in all blank spaces. If no change in the Base Bid is required, enter "No Change". Bids shall be signed with name typed below signature. Where bidder is a corporation, bids must be signed with the legal name of the corporation followed by the name of the state of incorporation and the legal signatures of an officer authorized to bind the corporation to a contract.

BID REQUIREMENTS: Subcontractors shall include the following with their bids: Completed "List of Materials and Equipment" and "Unit Prices" for their respective work. Contractors to also complete the "List of Subcontractors" for their work category.

BID BOND: Bid Bond to be set at 5% of the amount bid. Full Payment and Performance Bond will be required.

The Contractor will have a period of one (1) hour from time of bid opening (2:00 p.m. March 19, 2013) to compile "List of Materials and Equipment" and "List of Subcontractors". "Unit Prices" will be required at time of bid opening.

END OF INSTRUCTIONS TO BIDDERS

Bidder's Representation

This statement of determination certifies that this Contractor is not on the U.S. General Services Administration Lists of Parties Excluded from Federal Procurement or Non-Procurement Programs (www.epls.gov).

Name of General Contractor

Signature/Title

Date

Printed Name/Title

BID FORM

TO: **Mountain Comprehensive Health Corporation**
226 Medical Plaza Lane
Whitesburg, Kentucky 41858

FROM: Contractor: _____
Address: _____
Telephone: _____

PROJECT: Leatherwood/Blackey Medical Clinic Renovation
Mountain Comprehensive Health Corporation
Cornettsville, Kentucky 41731
Perry County

-
1. I, THE UNDERSIGNED, having carefully examined the building site, all conditions affecting the Work, and the Contract Documents as prepared by **Omni Architects**, propose to furnish labor, materials, and equipment and all other expense items specified and required, under the Contract, for the gross total lump sum of:

_____ Dollars (\$_____).

2. ALTERNATES. The following Alternate Bids are requested which offer substitutions, additions, or deletions to the Base Bid:

1. Add Alternate Number One. Flooring. In lieu of furnishing and installing new Resilient Tile Flooring (Section 096519) and Resilient Base (096513) in locations indicated on Drawings, provide Porcelain Tile and Base in selected areas as specified in Tiling (Section 093000).

Add _____ Dollars (\$_____) to the Base Bid.

2. Add Alternate Number Two. Room Finishes. Provide an Additive Alternate for inclusion of Resilient Tile Flooring (Section 096519), Resilient Base (Section 096513), Wall Painting (Section 099123) and Toilet, Bath and Laundry Accessories (Section 102800) in the following rooms; Physical Therapy S-01, and Rooms S-02 through S-05.

Add _____ Dollars (\$_____) to the Base Bid.

3. Add Alternate No. Three: Provide (Furnish and Install) an Additive Alternate to replace plumbing fixtures and fittings (sink and toilet) in rooms C-40, C-42, C-158, and C-27. Include ADA compliant drain insulation. Include sealants and all associated work for a complete installation. Include demolition and repair work.

Add _____ Dollars (\$_____) to the Base Bid.

4. Add Alternate No. Four: Canopy. Provide (furnish and install) an Additive Alternate for inclusion of the exterior drop-off canopy as shown on the Drawings and Specifications including demolition, excavation, footings, steel frame, masonry, roofing, sheet metal and sitework including curbs, plantings, pavement, paint stripes and site furnishings.

Add _____ Dollars (\$ _____) to the
Base Bid.

In submitting this Bid, I agree:

To hold my Bid open for a period of forty-five (45) days following the Bid Opening.

To accept the provisions of the INSTRUCTIONS TO BIDDERS regarding disposition of Bid Security.

To enter into and execute a Contract, within ten (10) days of its presentation, on the basis of this Bid and to furnish Guarantee Bonds as described in the INSTRUCTIONS TO BIDDERS.

To commence the Work within fifteen (15) days of receiving written notice from the Owner to proceed and to complete the Work within the time restrictions outlined in the INSTRUCTIONS TO BIDDERS.

To accomplish the work in accordance with the Contract Documents.

ADDENDA. Receipt of the following Addenda is hereby acknowledged.

Addendum Number	_____	Date	_____
Addendum Number	_____	Date	_____
Addendum Number	_____	Date	_____

Signed By: _____

Date: _____

(See next page for list of Unit Prices to be included in Bid Form)

3. **LIST OF UNIT PRICES.** Unit prices shall include the furnishing of all labor, materials, suppliers, services, and shall include all items of cost, overhead and profit for the Contractor and any Subcontractor involved, and shall be used uniformly without modification for either additions or deductions. The Unit Prices as established shall be used to determine the equitable adjustment of the Contract Price in connection with changes or extra work performed under the Contract. Failure to completely fill out all unit prices requested will result in Bid rejection.

ITEM DESCRIPTION	UNIT	UNIT PRICE
SITEWORK		
1. Mass earth excavation	C.Y.	\$ _____
2. DGA/Gravel fill in place	C.Y.	\$ _____
3. Trench excavation by hand	C.Y.	\$ _____
4. Rock excavation by hand	C.Y.	\$ _____
5. Topsoil removal and replacement	C.Y.	\$ _____
6. Concrete pavement installed	S.F.	\$ _____
7. Concrete curb installed	L.F.	\$ _____
8. Concrete header curb installed	L.F.	\$ _____
9. Concrete pavement, reinforced and installed	S.F.	\$ _____
10. Asphalt pavement and base installed	S.F.	\$ _____
11. Sod installed	S.Y.	\$ _____
STRUCTURAL		
12. Structural concrete in place footings, including excavation, formwork, reinforcement, & backfill	C.Y.	\$ _____
13. Slab on grade, including gravel base, vapor barrier, reinforcement, concrete, finish, curing, control joints and construction joints	S.F.	\$ _____
14. Structural steel, including shop drawings, material, fabrication, delivery & erection	LB.	\$ _____
15. Roof deck, including material, fabrication and erection	S.F.	\$ _____
ARCHITECTURAL		
16. Ceramic floor tile, including wall base	S.F.	\$ _____
17. Gypsum board on wood studs painted (wall type 1A)	L.F.	\$ _____
18. Acoustical ceiling panel	S.F.	\$ _____
19. Resilient floor tile	S.F.	\$ _____
20. Doors with frames and hardware (Type D-1)	Each	\$ _____
21. Doors with frames and hardware (Type F-1)	Each	\$ _____
22. Latex eggshell paint on gypsum board	S.F.	\$ _____
MECHANICAL AND ELECTRICAL		
23. 1" copper domestic water piping with insulation	L.F.	\$ _____
24. ¾" inch EMT conduit – installed	L.F.	\$ _____
25. 1" EMT conduit – installed	L.F.	\$ _____

26.	3 #12 conductor in conduit – installed	L.F.	\$ _____
27.	Duplex receptacle – installed	Each	\$ _____
28.	GFI receptacle – installed	Each	\$ _____
29.	Quad receptacle – installed	Each	\$ _____
30.	120-volt, 20 amp, single pole circuit breaker – installed	Each	\$ _____
31.	Exit sign (Type X) – installed	Each	\$ _____
32.	Wall mounted clock – installed with system connection programming	Each	\$ _____
33.	Voice/data outlet with one category 5e RJ-45 jack – installed	Each	\$ _____
34.	Category 5e UTP cable – installed, terminated, tested	Each	\$ _____

4. LIST OF MATERIALS AND EQUIPMENT. Bidders are hereby advised that the following list shall be required to be filled out completely by the Bidder if the referenced Bidder is to qualify for consideration.

No material or equipment will be considered which is not in every respect equal to that specified or shown on the Drawings.

Materials listed “as specified” will be interpreted as meaning the exact item, by brand or make, as specified.

<u>ITEM</u>	<u>BRAND NAME OR MANUFACTURER</u>
-------------	-----------------------------------

General Construction:

Metal Roof Deck	_____
Concrete Supplier	_____
Structural Steel Fabricator	_____
Reinforcing Steel Fabricator	_____
Masonry Stone Unit	_____
Plastic Laminate	_____
Solid Surfacing	_____
Metal Roofing	_____
Wood Doors	_____
Hollow Metal Frames	_____
Finish Hardware	_____
a. Locksets	_____
b. Closers	_____
c. Hinges	_____
Glass	_____
Caulking	_____
Acoustical Ceilings	_____
Gypsum Drywall	_____
Ceramic Tile	_____

ITEM	BRAND NAME OR MANUFACTURER
Paint	
Vinyl Composition Tile	
Vinyl Base	
Cubicle Curtain Tracks	
<u>Mechanical:</u>	
Electric Heaters (UH & EH)	
Air Distribution Devices	
Exhaust Fans (EF)	
<u>Plumbing:</u>	
Water Closet	
Lavatories	
Faucets	
Mixing Valves	
Expansion Tanks	
RPZ Backflow Preventer	
Pressure Reducing Valve	
<u>Electrical:</u>	
Light Fixtures (Attach List)	
Panelboards/Switchboards	
Emergency Generator	
Transfer Switches	
Sound System	

List of Subcontractors

LIST OF SUBCONTRACTORS. The following list of proposed subcontractors is required to be executed, completed, and submitted with the Bid Form. All subcontractors are subject to approval by the Architect and Owner. Failure to submit this list will result in a bid rejection.

Addresses may be filled out by the apparent low bidder within ONE (1) HOUR from the close of the official reading of the bids.

If certain branches of work are to be done by the Prime Contractor, so state. Review/evaluation of subcontractors will occur on the bid opening day. If the Architect or Owner requests replacement of a subcontractor on bid opening day, then the apparent low bidder will provide a replacement subcontractor prior to close of business day on that day. Failure of the apparent low bidder to comply with the preceding sentence will result in bid rejection. If subcontractor review/evaluation is not completed on the bid opening day, then procedures for any replacement will be issued based on the uniqueness of each situation. The responsibility for selection of qualified, competent subcontractors to accomplish the work intended is solely the responsibility of the bidder.

ITEM DESCRIPTION	SUBCONTRACTOR NAME AND ADDRESS
SITEWORK	
Earthwork	
Asphalt Paving	
Concrete Pavement	
Landscaping	

STRUCTURAL

Reinforcing Steel Fabricator

Concrete Installation

Structural Steel Fabricator

Structural Steel Installation

ARCHITECTURAL

Unit Masonry

Interior Architectural Woodwork

Plastic Laminate Cabinets

Metal Roof Panels

ARCHITECTURAL CONTINUED

Finish Hardware

Wood Framing/Gypsum Board

Ceramic Tile

Acoustical Panel Ceilings

Resilient Floor Tile/Base

Painting

MECHANICAL

Mechanical

Sheet Metal

MECHANICAL CONTINUED

Balance

Insulation

PLUMBING

Plumbing

Insulation

ELECTRICAL

Electrical

Voice/Data System

END OF BID FORM

LIST OF REFERENCES

Bidder Qualifications: The bidder is required to submit with bid form a list of completed projects where the Contractor has performed similar work to that specified herein.

Organization: _____

Contact Name: _____

Phone Number: _____

Date Work Completed: _____ Value of Contract: _____

Project Manager assigned to this Project: _____

Brief Project Description: _____

Organization: _____

Contact Name: _____

Phone Number: _____

Date Work Completed: _____ Value of Contract: _____

Project Manager assigned to this Project: _____

Brief Project Description: _____

Organization: _____

Contact Name: _____

Phone Number: _____

Date Work Completed: _____ Value of Contract: _____

Project Manager assigned to this Project: _____

Brief Project Description: _____

Payment and Performance Bond

KNOW ALL MEN BY THESE PRESENTS, that we, _____, as principal, and _____ company of _____, as surety, are held firmly bound unto **Mountain Comprehensive Health Corporation** as Owner, in the sum of _____ Dollars (\$_____), lawful money of the United States, for the payment of which sum to _____ we hereby bind ourselves and our respective executors and administrators firmly by these presents. The condition of this Bond is such that if the above bounden _____ shall on his part fully and faithfully perform all of the terms of the Contract entered into this day between him and the Owner for the construction of and shall pay all claims for labor performed and material furnished in the prosecution of said work, and save the Owner harmless from all claims for damages because of negligence in the prosecution of said work, and shall save the said Owner from all claims for compensation of employees and employees of subcontractor, then this Bond is to be void, otherwise of full force, virtue and effect.

Signed and Sealed this _____ day of _____, 20 ____

Principal _____ (Seal)
Title:

Surety _____ (Seal)
Title

DHHS Bonding Requirements/Background

The minimum required by DHHS for construction contracts over \$100,000 is surety bonds for performance and payment (45 CFR Parts 74.48 (c) and 92.36 (h)). The bonds must cover 100 percent of the cost of the contract. These bonds are to be secured from companies holding certificates of authority from the US Department of Treasury, in conformance with "Surety Companies Doing Business with the United States" (74.21 (e)).

END OF PAYMENT AND PERFORMANCE BOND

Partial Waiver & Release of Lien

PROJECT: Leatherwood/Blackey Medical Clinic Renovation
Mountain Comprehensive Health Corporation
Whitesburg, Kentucky 41858

ARCHITECT: **OMNI ARCHITECTS**
212 North Upper Street
Lexington, Kentucky 40507

GENERAL CONTRACTOR: _____

KNOW ALL MEN BY THESE PRESENTS, that the undersigned,
_____ has been employed
by _____ under agreement dated _____ to furnish
_____ in consideration of full payment in the sum of
\$_____ receipt whereof is hereby acknowledged, and other valuable considerations
and benefits to the undersigned accruing, does hereby waive, release and quit claim all liens, lien rights,
claims or demands of every kind whatsoever which the undersigned now has, or may hereafter have
against that certain real estate and the improvements thereon, situated in **Cornettsville, Kentucky** on
account of work and labor performed, and/or materials furnished in, to, or about the construction of any
building or buildings situated thereon, or in improving said property above described, or any part thereof,
it being the understanding of the undersigned that this is a Partial Waiver and Release of Lien which the
undersigned has against the premises described herein, only to the extent of the payments specified and
only for materials furnished or work done up until (but not releasing or waiving charges for changes,
additions, or extras).

The undersigned warrants that no assignment of said liens or claims, nor the right to perfect a lien against said real estate, by virtue of the accrual of said payment, has or will be made, and that the undersigned has the right to execute this Partial Waiver and Release of Lien, and that all laborers employed by the undersigned, and all bills for materials and supplies furnished by others to the undersigned in connection with the construction of improvements upon the aforesaid premises, to the extent of the payment herein referred to, have been fully paid.

IN WITNESS WHEREOF, I/we have executed this instrument under seal this _____ day of _____ 20__.

WITNESSES: _____(SEAL)

By: _____

Name & Title: _____

Personally appeared before me this _____ day of _____ 20__.

_____ who being duly sworn on oath, says: That he is _____ of _____ and that he hereby acknowledges the executive of the foregoing instrument for and on behalf of said _____ and at its special instance and request.

Notary Public

My Commission Expires: _____

END OF PARTIAL WAIVER & RELEASE OF LIEN

Final Waiver & Release of Lien

PROJECT: Leatherwood/Blackey Medical Clinic Renovation
Mountain Comprehensive Health Corporation
Whitesburg, Kentucky

ARCHITECT: **OMNI ARCHITECTS**
212 North Upper Street
Lexington, Kentucky 40507

GENERAL CONTRACTOR: _____

KNOW ALL MEN BY THESE PRESENTS, that the undersigned,
_____ has been employed
by _____ under agreement dated _____ to furnish
_____ in consideration of full payment in the sum of
\$_____ receipt whereof is hereby acknowledged, and other valuable considerations
and benefits to the undersigned accruing, does hereby waive, release and quit claim all liens, lien rights,
claims or demands of every kind whatsoever which the undersigned now has, or may hereafter have
against that certain real estate and the improvements thereon, situated in **Cornettsville, Kentucky** on
account of work and labor performed, and/or materials furnished in, to, or about the construction of any
building or buildings situated thereon, or in improving said property above described, or any part thereof.

The undersigned warrants that no assignment of said liens or claims, nor the right to perfect a lien against
said real estate, by virtue of the accrual of said payment, has or will be made, and that the undersigned has
the right to execute this Final Waiver and Release of Lien, and that all laborers employed by the

undersigned, and all bills for materials and supplies furnished by others to the undersigned in connection with the construction of improvements upon the aforesaid premises have been fully paid.

IN WITNESS WHEREOF, I/we have executed this instrument under seal this _____ day of _____ 20__.

WITNESSES:

_____(SEAL)

By: _____

Name & Title: _____

Personally appeared before me this _____ day of _____ 20__.

_____ who being duly sworn on oath, says: That he is _____ of _____ and that he hereby acknowledges the executive of the foregoing instrument for and on behalf of said _____ and at its special instance and request.

Notary Public

My Commission Expires: _____

END OF FINAL WAIVER & RELEASE OF LIEN

CONTRACTOR'S REQUEST FOR PARTIAL PAYMENT

Refer to attachment.

PROJECT.

CONTRACTOR'S REQUEST FOR PARTIAL PAYMENT NO.

CONTRACTOR:

PERIOD BEGINNING: **AND ENDING:**

Omni Architects

PAGE OF

[illegible]

CONTRACTOR'S REQUEST FOR PARTIAL PAYMENT

PERIOD BEGINNING: **AND ENDING:**

Omni Architects

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[illegible]

Change Orders This Month (Add) (Deduct)

Adjusted Contract Amount

Total Completed to Date

Less 10% Retainage

Total Earned Less Retainage

Less Previous Payment

CURRENT PAYMENT DUE

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

Mountain Comprehensive Health Corporation
Leatherwood/Blackey Clinic
464 KY Highway 699
Cornettsville, Kentucky 41731

THE OWNER:

Mountain Comprehensive Health Corporation
226 Medical Plaza Lane
Whitesburg, Kentucky 41858

THE ARCHITECT:

Omni Architects
212 North Upper Street
Lexington, Kentucky 40507

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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.

Init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

§ 3.4 LABOR AND MATERIALS

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

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

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

§ 3.5 WARRANTY

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

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

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

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

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and

completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

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

§ 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.

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

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

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the

Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

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

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount

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for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or

encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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

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

§ 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

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

§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

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

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

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

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

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

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

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§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

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

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

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§ 11.3 PROPERTY INSURANCE

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

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

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

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

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

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment

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property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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

§ 11.3.7 WAIVERS OF SUBROGATION

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

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

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

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

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

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

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

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

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

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

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

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by

such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

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

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

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

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

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

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

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

§ 15.2 INITIAL DECISION

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

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

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

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

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

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

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

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

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

§ 15.3 MEDIATION

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

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

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

§ 15.4 ARBITRATION

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

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

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

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

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

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

Supplementary Conditions

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SUPPLEMENTARY CONDITIONS

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

ARTICLE 1: GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

Add the following to the definitions in paragraph 1.1 of the General Conditions:

1.1.9 MISCELLANEOUS DEFINITIONS

1.1.9.1 The term "Addendum" is a document issued during the bidding period which modifies, supersedes, or supplements the original contract documents.

1.1.9.2 "Approved" and "acceptable," shall mean approved by, and acceptable to the Architect, as expressed in writing. "As directed" and "as permitted" refer to direction, instruction, or permission of the Architect. The words "necessary," "proper," or words of similar importance, when used with respect to the extent, conduct, or character of the work shall mean that the work shall be carried to the extent, conducted in a manner, or be of a character which, in the opinion of the Architect, is necessary or proper under the circumstances. The judgment of the Architect in such matters shall be considered final.

1.1.9.3 "Include," as used herein, including derivatives thereof, shall be interpreted to mean "include but not limited to."

1.1.9.4 "Per," as used herein, means "shall be in accordance with the provisions of."

1.1.9.5 The term "product" as used in these Supplementary Conditions includes materials, systems and equipment.

1.1.9.6 The term "Project Manual" as used in these Supplementary Conditions is the volume which includes the bidding requirements, Conditions of the Contract and the Specifications.

1.1.9.7 "Provide," including derivatives thereof, means "provide complete in place," that is, "furnish and install."

1.1.9.8 "Symmetrical" and "similar" are used in a general sense and need not mean "identical."

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

Add Section 1.2.1.1 to Section 1.2.1 of the General Conditions:

1.2.1.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Agreement.

2. Addenda, with those of later date having precedence over those of earlier date.
3. The Supplementary Conditions.
4. The General Conditions of the Contract for Construction.
5. Division 1 of the Specifications.
6. Drawings and Divisions 2-33 of the Specifications.

In the case of conflicts or discrepancies between Drawings and Divisions 2-33 of the Specifications or within either Document not clarified by Addendum, the Architect will determine which takes precedence in accordance with Section 4.2.11.

Add the following paragraphs to Article 1 of the General Conditions:

1.2.4 Misspelling, misplacement, "streamlining," addition or omission of a word or character shall not change the obvious intent of the Contract Documents.

1.2.5 Drawings. Abbreviations or simplification or drawings or details shall not constitute reason for extra changes or omission of work required. Structural drawings need not show architectural finishes or mechanical installations or vice versa. Work not dimensioned shall be as directed by Architect. Each subcontractor shall check all the drawings and specifications before submitting bid.

1.2.6 A colon (:) infers the words "shall be," "shall conform to," or "shall comply with."

1.2.7 Imperative directions refer to the Contractor.

1.2.8 A summary is included at the beginning of each section of specifications to briefly describe the work; however, it is not intended to be a comprehensive list of work included.

1.6 TRANSMISSION OF DATA IN DIGITAL FORM

Add the following 1.6.1 to Paragraph 1.6 of the General Conditions:

1.6.1 Contractors permitted use of Drawings of the Contract Documents in electronic form shall be required to implement the current edition of AIA Document C106 as modified by the Architect.

ARTICLE 2: OWNER

(No Changes)

ARTICLE 3: CONTRACTOR

3.4 LABOR AND MATERIALS

Delete Section 3.4.2 and substitute the following:

3.4.2 After the Contract has been executed, the Owner and the Architect will consider a formal request for the substitution of products in lieu of those specified only under the conditions set forth in the General Requirements (Division 1 of the Specifications). By making request for substitutions, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would be that specified;

.3 certifies that the cost data presented is complete and includes all related costs under this Contract but excludes costs under separate contracts, and excludes the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

MINIMUM RATES OF PAY

3.19.1 Minimum hourly wage rates, set forth in the General Conditions, shall be paid on this project. The stipulated wage rates represent prevailing minimum wage rates of pay allowable and shall not be construed to mean that higher rates may not have to be paid in order to secure labor. No contract adjustment is permissible should this condition become applicable.

ARTICLE 4: ARCHITECT

4.2 ADMINISTRATION OF THE CONTRACT

Add the following to Paragraph 4.2.10 of the General Conditions:

4.2.10.1 If a Project Representative is employed at the site by the Architect, the Project Representative's duties, responsibilities and limitations of authority shall be as set forth in AIA® Document B207™-2008, On-Site Project Representation.

ARTICLE 5: SUBCONTRACTORS

(No Changes)

ARTICLE 6: CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

(No Changes)

ARTICLE 7: CHANGES IN THE WORK

(No Changes)

ARTICLE 8: TIME

The time for Substantial Completion as further defined in Article 9 of the General Conditions shall be forty-five (45) consecutive calendar days from the date of commencement per phase as specified in the Work Order letter, and Final Completion shall be fifteen (15) days thereafter. The Contractor shall have thirty (30) days after the Notice to Proceed to mobilize. There will be 3 phases of equal duration. Total of 180 consecutive days.

ARTICLE 9: PAYMENTS AND COMPLETION

9.2 SCHEDULE OF VALUES

Add the following sentence to paragraph 9.2 of the General Conditions:

9.2.2 The Schedule of Values shall be prepared in such a manner that each major item of Work is shown as a single line item on the approved form of Application for Payment.

9.3 APPLICATIONS FOR PAYMENT

Add the following sentence to Paragraph 9.3.1 of the General Conditions:

9.3.1.3 Until Substantial Completion, the Owner will pay 90% of the amount due the Contractor on account of progress payments. Upon Substantial Completion the Owner will pay 95% of the amount due the contractor until Final Completion and Final Payment.

Add the following Section 9.11 to Article 9 of the General Conditions:

9.11 LIQUIDATED DAMAGES

9.11.1 The Contractor and the Contractor's surety, if any, shall be liable for and shall pay the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay after the date established for Substantial Completion for each phase in the Contract Documents until the Work is declared substantially complete by the Architect:

For the first 30 days of delay Five Hundred and 00/100 Dollars (\$500.00)

And thereafter Five Hundred and 00/100 Dollars (\$500.00)

ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY

10.2 SAFETY OF PERSONS AND PROPERTY

Add the following Subparagraph to Paragraph 10.2 of the General Conditions:

10.2.4.1 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary, the Contractor shall give the Owner reasonable advance notice.

ARTICLE 11: INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

Add the following to Paragraph 11.1.1 of the General Conditions:

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

1. Premises Operations (including X,C and U coverages as applicable).
2. Independent Contractor's Protective.
3. Products and Completed Operations.
4. Personal Injury Liability with Employment Exclusion Deleted.
5. Contractual - including specified provision for the Contractor's obligations under Paragraph 3.18.
6. Owner, non-owner and hired motor vehicles.

7. Broad Form Property Damage including Completed Operations.

11.1.1.10 If the General Liability coverages are provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.

Add the following to 11.1.2 of the General Conditions:

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

1. Worker's Compensation:

- | | |
|--------------------------|---|
| (a) State | Statutory |
| (b) Applicable Federal | Statutory |
| (c) Employer's Liability | \$500,000 per accident
\$1,000,000 Disease, Policy Limit
\$500,000 Disease, Each Employee |

2. Comprehensive or Commercial General Liability (including Premises Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage)

- | | |
|---|--|
| (a) Bodily Injury | \$1,000,000 Each Occurrence
\$2,000,000 Aggregate |
| (b) Property Damage | \$500,000 Each occurrence
\$1,000,000 Aggregate |
| (c) Products and Completed Operations to be maintained for 2 years after final payment: | \$1,000,000 Aggregate |
| (d) Property Damage Liability Insurance shall provide X, C and U coverage. | |
| (e) Broad Form Property Damage shall include Completed Operations. | |

3. Contractual Liability

- | | |
|---------------------|--|
| (a) Bodily Injury | \$500,000 Each Occurrence
\$1,000,000 Aggregate |
| (b) Property Damage | \$500,000 Each occurrence
\$500,000 Aggregate |

4. Personal Injury, with Employment Exclusion deleted:

\$1,000,000 Per Person
\$2,000,000 Aggregate

5. Business Auto Liability (including owned, non-owned and hired vehicles):

- | | |
|---------------------|--|
| (a) Bodily Injury | \$500,000 Each person
\$1,000,000 Each occurrence |
| (b) Property Damage | \$500,000 Each occurrence |

6. If the General Liability coverages are provided by a Commercial Liability policy, the:
 - (a) General Aggregate shall be not less than \$2,000,000 and it shall apply to this Project only.
 - (b) Fire Damage Limit shall be not less than \$1,000,000 on any one fire.
 - (c) Medical Expense Limit shall be not less than \$500,000 on any one person
7. Umbrella Excess Policy
\$1,000,000 over primary insurance.
\$500,000 retention for self-insured hazards each occurrence

Add the following sentence to Paragraph 11.1.3 of the General Conditions:

If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable.

11.3 PROPERTY INSURANCE

11.3.1 Modify the first sentence of Subparagraph 11.3.1 as follows: Delete "Unless otherwise provided, the Owner" and substitute "The Contractor"

Add the following sentences:

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

11.3.1.3 Delete Clause 11.3.1.3

Delete Subparagraph 11.3.6 and substitute the following:

11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner two certified copies of the policy or policies providing this Property Insurance coverage, each containing those endorsements specifically related to the Project. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor.

11.3.7 Modify Subparagraph 11.3.7 by substituting "Contractor" for "Owner" at the end of the first sentence.

11.3.8 Modify Subparagraph 11.3.8 by substituting "Contractor" for "Owner" as fiduciary; except that at the first reference to "Owner" in the first sentence, the word "this" should be substituted for "Owner's."

11.3.9 Modify Subparagraph 11.3.9 by substituting "Contractor" for "Owner" each time the latter word appears.

11.3.10 Modify Subparagraph 11.3.10 by substituting "Contractor" for "Owner" each time the latter word appears.

11.4 PERFORMANCE BOND AND PAYMENT BOND

Delete Subparagraph 11.4.1 and substitute the following:

11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to 5% percent of the Contract Sum.

11.4.1.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the work, submit evidence satisfactory to the Owner that such bonds will be furnished.

11.4.1.2 The Contractor 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.

Add the following Paragraphs to Article 11 of the General Conditions:

11.5 INSURANCE CANCELLATION NOTICE

11.5.1 Any insurance cancellation must be preceded by a thirty (30) day written notice to the Owner with copy to the Architect. No exceptions will be permitted.

ARTICLE 12: UNCOVERING AND CORRECTION OF WORK

(No Changes)

ARTICLE 13: MISCELLANEOUS PROVISIONS

(No Changes)

ARTICLE 14: TERMINATION OR SUSPENSION OF THE CONTRACT

(No Changes)

ARTICLE 15 CLAIMS AND DISPUTES

Add the following Sections 15.1.5.3 and 15.1.5.4 to Section 15.1.5 of the General Conditions:

15.1.5.3 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

15.1.5.4 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

END OF SUPPLEMENTARY CONDITIONS

HAZARDOUS MATERIALS REPORT

Refer to the attached report by Air Source Technology, Inc. dated 12/27/2012 for full extent of floor materials to be removed under separate contract by the Owner.

December 27, 2012

Mr. Ralph Hall
 Mt. Comprehensive Health Center
 464 KY Highway 699
 Cornettsville, KY 41731

RE: Suspect Asbestos Analysis Results for Mt. Comprehensive Health Center
 ASTI Project No. C7933

Dear Mr. Hall:

Air Source Technology, Inc. (ASTI) conducted a limited asbestos survey at the above referenced building on December 11, 2012 for suspect asbestos materials. In general, ASTI followed the survey protocol outlined in ASTM International (ASTM) Document E2308-05, Standard Guide for Limited Asbestos Screens of Buildings. Thus, there may be asbestos materials behind walls, interior cavities and above solid ceilings that were not accessible during our visit of the building.

The structure is described as a brick veneer building with a metal roof, built around 1975 with a later 2000 addition. The interior finishes include drywall, floor tiles and non-suspect drop ceiling tiles. A force-air heating system was located in the building and this system did not have suspect asbestos materials. The drop ceiling tiles were not considered to contain asbestos materials and were manufactured by Armstrong Corporation. The attached letter from Armstrong states their drop ceiling tiles do not contain asbestos.

Suspect asbestos samples were collected and analyzed for asbestos content. Analysis was completed by Environmental Hazards Services, accredited with NVLAP. The following table summarizes the materials sampled and analysis results.

Suspect Asbestos Building Material Samples		
Sample ID	Location/Description	Asbestos (%)
M-DW1	Drywall	<1% Chrysotile
M-DW2	Drywall	None Detected
M-DW3	Drywall	None Detected
M-TX1	Ceiling texture on drywall	None Detected
M-TX2	Ceiling texture on drywall	None Detected
M-TX3	Ceiling texture on drywall	None Detected
M-FT1	2nd layer floor tile (yellow mastic not suspect)	2% Chrysotile
M-FT1	2 nd layer floor tile	1.25% Chrysotile (point count)

Note: Greater than 1% is defined as asbestos-containing

Page Two
ASTI No. C7933

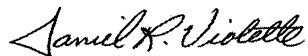
Unless otherwise requested, all samples will be discarded thirty days from the date of the laboratory report. The drywall was either a trace (less than 1% chrysotile) or no asbestos detected (NAD) per the analyses results.

The textured ceiling finish was located in six different rooms, primarily in the north section of the original building. This material was on the drywall ceilings. The ceiling texture and the drywall samples had no asbestos detected (NAD) per the analyses results.

The floor tile was located throughout the building, both in the original structure and the additions. The lower layer floor tile contained 1.25% chrysotile asbestos per the point count analysis results. This material is defined as asbestos-containing under EPA rules. The mastic under these floor tiles was not suspect to contain asbestos. The original building contains the second layer of asbestos-containing floor tiles.

Air Source Technology, Inc. appreciates the opportunity to be of service. Should you have any questions, please call me at (859) 299-0046.

Sincerely,



Dan Violette
KY-DAQ Asbestos Inspector/Mgmt Planner
Attachments



Environmental Hazards Services, L.L.C.
7469 Whitepine Rd
Richmond, VA 23237
Telephone: 800.347.4010

Asbestos 400 Point Count Analysis Report

Client: Air Source Technology Inc.
160 Prosperous Pl. Ste. 201
Lexington, KY 40509

Report Number: 12-12-01757

Received Date: 12/14/2012

Analyzed Date: 12/14/2012

Reported Date: 12/14/2012

Project/Test Address: C7933 Mt C; EHS# 12-12-01673

Client Number:

18-4340

Fax Number:

859-299-0494

Laboratory Results

Lab Sample Number	Client Sample Number	Lab Gross Description	% Asbestos	Narrative ID
12-12-01757-001	M-F1	Gray Vinyl	1.25 % Chrysotile	
12-12-01757-002	M-F2		Did Not Analyze: Positive Stop	
12-12-01757-003	M-F3		Did Not Analyze: Positive Stop	

Reporting Limit: 0.25 % Asbestos

Method: EPA Method 600/R-93/116, EPA Method 600/M4-82-020

Analyst: Vickie Holmes

Reviewed By Authorized Signatory:

Julie Dickerson
Laboratory Administrator

The condition of the samples analyzed was acceptable upon receipt per laboratory protocol unless otherwise noted on this report. Results represent the analysis of samples submitted by the client. Sample location, description, area, volume, etc., was provided by the client. This report cannot be used by the client to claim product endorsement by NVLAP or any agency of the U.S. Government. This report shall not be reproduced except in full, without the written consent of the Environmental Hazards Service, L.L.C. California Certification #2319 NY ELAP #11714.

LEGEND NAD = No Asbestos Detected



Environmental Hazards Services, L.L.C.
7469 Whitepine Rd
Richmond, VA 23237
Telephone: 800.347.4010

Asbestos Bulk Analysis Report

Client: Air Source Technology Inc.
160 Prosperous Pl. Ste. 201
Lexington, KY 40509

Report Number: 12-12-01673

Received Date: 12/14/2012
Analyzed Date: 12/14/2012
Reported Date: 12/14/2012

Project/Test Address: C7933 Mt C

Client Number:
18-4340

Fax Number:
859-299-0494

Laboratory Results

Lab Sample Number	Client Sample Number	Layer Type	Lab Gross Description	Asbestos	Other Materials
12-12-01673-001	M-DW-1		Tan Chalky; White Granular; Inhomogeneous	Trace <1% Chrysotile	3% Cellulose 97% Non-Fibrous
Total Asbestos: Trace <1%					
<1% Chrysotile present in white granular material.					
12-12-01673-002	M-DW-2		Tan Chalky; Brown Fibrous; Inhomogeneous	NAD	20% Cellulose 80% Non-Fibrous
12-12-01673-003	M-DW-3		Tan Chalky; White Granular; Inhomogeneous	NAD	3% Cellulose 97% Non-Fibrous
12-12-01673-004	M-TX-1		White Granular; Homogeneous	NAD	100% Non-Fibrous
12-12-01673-005	M-TX-2		White Granular; Homogeneous	NAD	100% Non-Fibrous

Environmental Hazards Services, L.L.C

Client Number: 18-4340
Project/Test Address: C7933 Mt C

Report Number: 12-12-01673

Lab Sample Number	Client Sample Number	Layer Type	Lab Gross Description	Asbestos	Other Materials
12-12-01673-006	M-TX-3		White Granular; Homogeneous	NAD	100% Non-Fibrous
12-12-01673-007	M-FT1		Gray Vinyl; Homogeneous	2% Chrysotile	98% Non-Fibrous
				Total Asbestos: 2%	
12-12-01673-008	M-FT2			Did Not Analyze (Positive Stop)	
12-12-01673-009	M-FT3			Did Not Analyze (Positive Stop)	

Environmental Hazards Services, L.L.C

Client Number: 18-4340
Project/Test Address: C7933 Mt C

Report Number: 12-12-01673

Lab Sample Number	Client Sample Number	Layer Type	Lab Gross Description	Asbestos	Other Materials
-------------------	----------------------	------------	-----------------------	----------	-----------------

QC Sample: 38-M1-1998-4

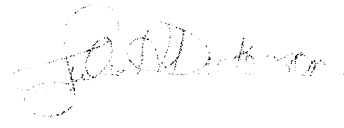
QC Blank: SRM 1866 Fiberglass

Reporting Limit: 1% Asbestos

Method: EPA Method 600/R-93/116, EPA Method 600/M4-82-020

Analyst: Araceli Enzler

Reviewed By Authorized Signatory:


Julie Dickerson
Laboratory Administrator

The condition of the samples analyzed was acceptable upon receipt per laboratory protocol unless otherwise noted on this report. Each distinct component in an inhomogeneous sample was analyzed separately and reported as a composite. Results represent the analysis of samples submitted by the client. Sample location, description, area, volume, etc., was provided by the client. This report cannot be used by the client to claim product endorsement by NVLAP or any agency of the U.S. Government. This report shall not be reproduced except in full, without the written consent of the Environmental Hazards Service, L.L.C. California Certification #2319 NY ELAP #11714. All information concerning sampling location, date, and time can be found on Chain-of-Custody. Environmental Hazards Services, L.L.C. does not perform any sample collection.

Environmental Hazards Services, L.L.C. recommends reanalysis by point count (for more accurate quantification) or Transmission Electron Microscopy (TEM), (for enhanced detection capabilities) for materials regulated by EPA NESHAP (National Emission Standards for Hazardous Air Pollutants) and found to contain less than ten percent (<10%) asbestos by polarized light microscopy (PLM). Both services are available for an additional fee.

400 Point Count Analysis, where noted, performed per EPA Method 600/R-93/116 with a Reporting Limit of 0.25%.

* All California samples analyzed by Polarized Light Microscopy, EPA Method 600/M4-82-020, Dec. 1982.

LEGEND: NAD = no asbestos detected



Environmental Hazards Services, LLC
www.leadlab.com 7469 Whitepine Rd
(800)347-4010 Richmond, VA
(804)275-4907 (fax) 23237

Asbestos Chain-of-Custody

12-12-01673



Due Date:
12/14/2012
(Friday)
AE

Company Name: Air Source Technology Inc.

Phone: (859)299-0046

Project Name/Testing Address: C7933 mtC

Collected by: Dan Violette

Address: 160 Prosperous Pl. Ste. 201,

Fax: 859-299-0494 E

E-mail:

City/State/Zip: Lexington, KY 40509

Acct. Number: 18-4340

City/State(required)

Purchase Order Number:

106220

Turn Around Times:

1 - Day 2 - Day 3 - Day X Same Day (Must Call Ahead) Weekend (Must Call Ahead)

No.	Client Sample ID	Date Collected	ASBESTOS						AIR			COMMENTS		
			PLM	PLM Point Count 400	PLM Point Count 1000	PLM NY Protocol	PCM	TEM Grinded (Bulk)	TEM AHERA (Air)	Time On	Time Off		Flow Rate (L/min)	Total Time (minutes)
1	M-DW1	12-11-12	X											Not Comp Health
2	M-DW2													Drywall
3	M-DW-3													"
4	M-TX1													"
5	M-TX2													Ceiling texture
6	M-TX3													"
7	M-ET1													"
8	M-ET2													12" white Ft (lower)
9	M-ET-3													"
0														"

Released by: Dan Violette Signature: DViolette
 Received by: M. Blower Signature: MBlower
 Date/Time: 12-11-12 5pm
 Date/Time: 12-11-12



ARMSTRONG WORLD INDUSTRIES, INC.
2500 COLUMBIA AVE., LANCASTER, PA 17603
P.O. BOX 3001, LANCASTER, PA 17604
717 397 0611
www.armstrong.com

September 23, 2004

VIA FACSIMILE

Dear Mr.

Subject: Item #942B, 24" x 48" x 5/8" Textured Contractor Ceilings

This will respond to your recent inquiry concerning the use of asbestos as a raw material in the manufacture of our ceiling panels.

Armstrong manufactures three basic categories of ceiling materials: mineral fiber, wood fiber, and glass fiber, none of which contain asbestos as a raw material.

While Armstrong has never manufactured an asbestos-containing ceiling tile or panel, Armstrong offered a jobbed product (not of our manufacture) as a specialty item, a nonfriable ceiling panel, asbestos cement ceiling board. The product was primarily of a Portland cement composition and can be easily identified by its slate-like texture. This product, asbestos cement ceiling board, was used almost exclusively as a commercial product in applications where humidity was a factor.

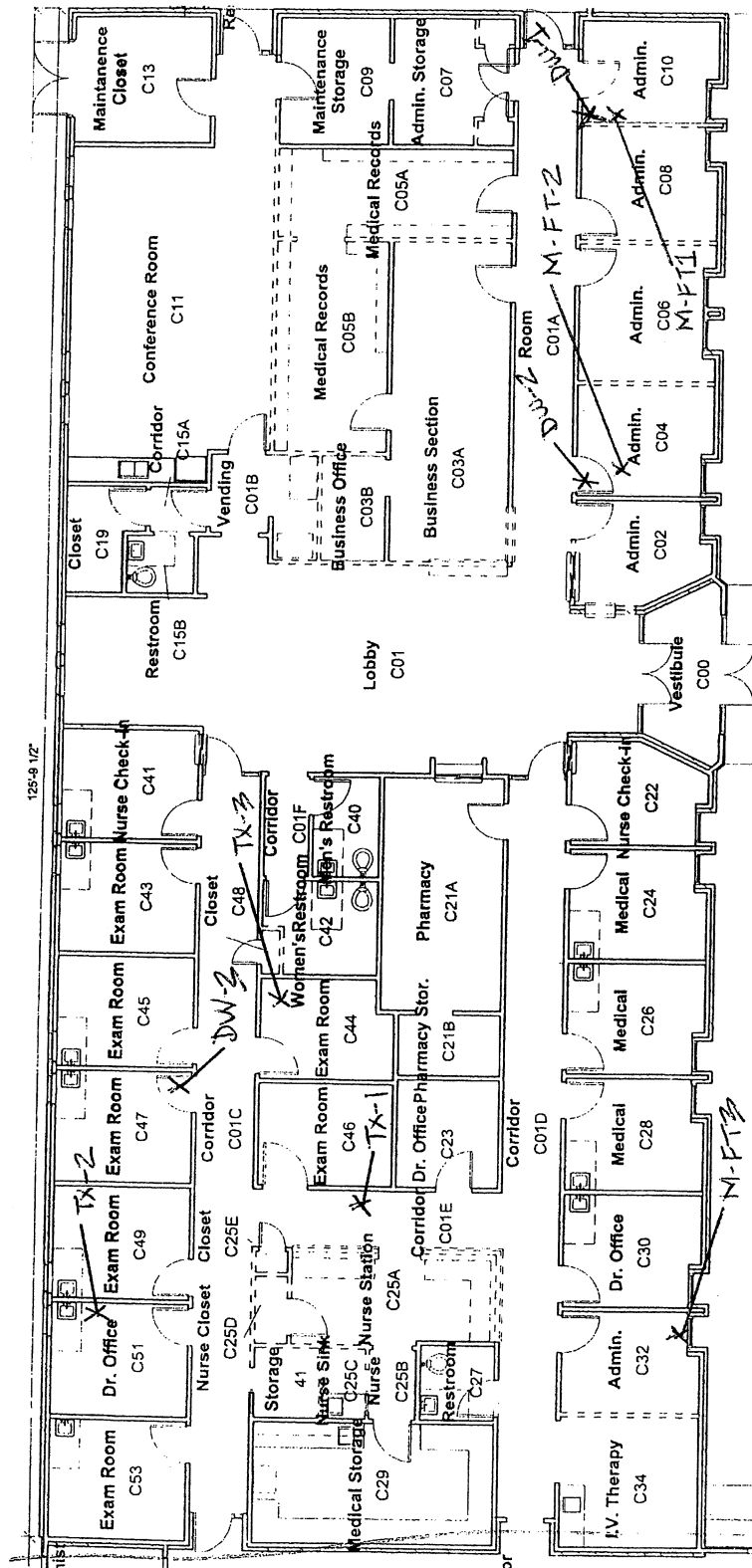
I trust this responds to your inquiry.

Sincerely,

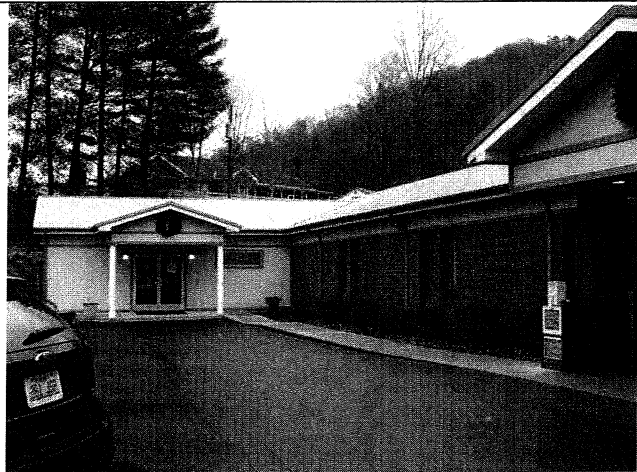
A handwritten signature in cursive script, reading "Barbara S. DeVoe".

Barbara S. DeVoe
Customer Focus Representative
Armstrong Building Products

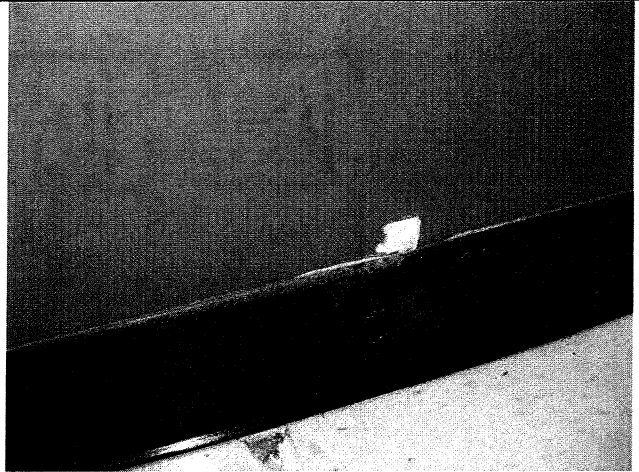
GLA



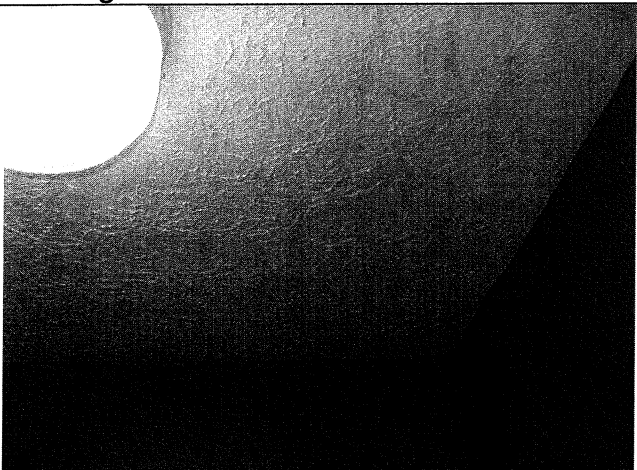
Air Source Technology, Inc.
 Project Name: Mt. Comprehensive Health Center
SAMPLE LOCATION PLAN
 Project No. C7835
 Date: 12.14.12



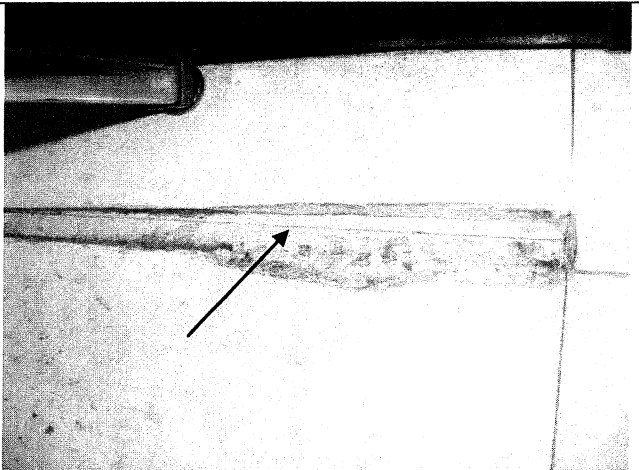
Photograph #1: Mt. Comprehensive Health building



Photograph #2: Drywall sample



Photograph #3: Ceiling texture on drywall



Photograph #4: 2nd layer tan floor tile under newer 12" white floor tile

Affidavit of Assurance

The General Contractor shall be required to complete the attached Affidavit of Assurances and to submit within two weeks of contract signing.

When submitting plan for a construction permit, the Affidavit of Assurances Form, as shown below, shall be submitted with plans to the Building Code Official. No form other than the one shown below shall be accepted.

DOH-BCE-04
7/90

CASE NO. _____

PROJECT NAME: _____

CITY/COUNTY: _____

*** AFFIDAVIT OF ASSURANCES
PURSUANT TO KRS 198B.060(10)**

Comes the Applicant, _____ and states,
(print name)

pursuant to KRS 198B.060(10), that all contractors and subcontractors employed or that will be employed on any activity under the above referenced project shall be in compliance with the Commonwealth of Kentucky requirements for Workers' Compensation Insurance (according to KRS Chapter 342) and Unemployment insurance (according to KRS Chapter 341).

THIS the _____ day of _____, 200____.

CONTRACTOR, OWNER OR OWNER'S AGENT

SUBSCRIBED AND SWORN to before me by _____, Applicant, on this the _____
day of _____, 200____.

NOTARY PUBLIC
STATE AT LARGE

MY COMMISSION EXPIRES: _____

* [] The Affidavit of Assurances is not required because the local building code official was, or will be presented the assurances upon issuance of the local building permit.

Prevailing Wage Rates

The General Contractor shall be required to certify that prevailing wage rates will be utilized.

When U.S. DOL wage determination does not include rates for needed classifications, the rates of pay shall be established after the contract has been awarded.

1. Rates of pay for laborers and mechanics must not be less than the wage rates determined for the locality under any applicable state law. The prevailing rates of pay shall be those determined by the applicant and concurred with the U.S. DOL.

The contractor shall complete Standard Form 144, Request for Authorization of Additional Classification and Rate statement with respect to prevailing rates from the respective Secretaries of the Associated General Contractors of America and the Building Trades Council having jurisdiction, listing classifications of labor to be employed and the prevailing minimum wage rates for each.

2. Certified lists of prevailing wage rates obtained from three area contractors are to be obtained by the applicant. The applicant shall submit Standard Form 1444 and the certified lists to OES for concurrence by U.S. DOL. Upon concurrence, OES shall return a copy to the applicant for incorporation in the contract documents by change order.
3. If all interested parties, including each affected employee where there is no representative labor group, cannot reach agreement as to proper classification or reclassification of a particular wage rate, OES shall refer the matter to the appropriate U.S. DOL Regional Office for decision.
4. Refer to Attachment for Local Federal Prevailing Wage Determination.

General Decision Number: KY130119 01/04/2013 KY119

Superseded General Decision Number: KY20120144

State: Kentucky

Construction Type: Building

Counties: Bath, Breathitt, Elliott, Fleming, Harlan, Harrison, Knott, Lawrence, Lee, Leslie, Lewis, Magoffin, Martin, Menifee, Montgomery, Morgan, Nicholas, Owsley, Perry, Robertson and Wolfe Counties in Kentucky.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Modification Number	Publication Date
0	01/04/2013

ASBE0008-006 07/01/2012

FLEMING, HARRISON, MONGOMERY, NICHOLAS & ROBERTSON COUNTIES

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Including Pipe Insulator & Pipe Wrapping).....	\$ 28.50	13.22

ASBE0046-006 05/01/2012

HARLAN, LESLIE & PERRY COUNTIES

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Including Pipe Insulator & Pipe Wrapping).....	\$ 23.39	10.96

ASBE0080-008 03/05/2012

BATH, BREATHITT, ELLIOTT, KNOTT, LAWRENCE, LEE, LEWIS, MAGOFFIN, MARTIN, MENIFEE, MORGAN, OWSLEY & WOLFE COUNTIES

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Including Pipe Insulator).....	\$ 30.20	17.97

BRKY0002-010 06/01/2011

ROBERTSON COUNTY

Rates	Fringes
-------	---------

BRICKLAYER.....\$ 26.32 10.26

BRKY0007-009 06/01/2011

ELLIOT, FLEMING, KNOTT, LAWRENCE, LEWIS, MAGOFFIN, MARTIN &
MORGAN COUNTIES

Rates Fringes

BRICKLAYER.....\$ 27.01 16.80

BRKY0017-006 06/01/2009

BATH, BREATHITT, HARLAN, HARRISON, LEE, LESLIE, MENIFEE,
MONTGOMERY, OWSLEY, PERRY, NICHOLAS, & WOLFE COUNTIES

Rates Fringes

BRICKLAYER.....\$ 24.11 9.97

CARP1031-013 06/01/2012

Rates Fringes

MILLWRIGHT.....\$ 24.18 15.57

ENGI0181-072 06/01/2012

Rates Fringes

POWER EQUIPMENT OPERATOR:

Cherry Picker, Crane,

Forklift, Grader/Blade.....\$ 26.27 13.40

Oiler.....\$ 22.66 13.40

CRANE WITH BOOM 150 FEET & OVER, INCLUDING JIB SHALL RECEIVE
\$.75 ABOVE RATE

ALL CRANES WITH PILING LEADS WILL RECEIVE \$.50 ABOVE RATE
REGARDLESS OF BOOM LENGTH

IRON0044-012 06/01/2012

HARRISON, MONTGOMERY & ROBERTSON COUNTIES and 95% WESTERN PART
OF NICHOLAS COUNTY

Rates Fringes

IRONWORKER, STRUCTURAL AND
ORNAMENTAL.....\$ 24.80 18.10

IRON0372-018 06/01/2012

HARRISON, MONTGOMERY & ROBERTSON COUNTIES and 95% WESTERN PART
OF NICHOLAS COUNTY

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 26.34	18.58

IRON0384-009 05/01/2011		

BREATHITT, HARLAN, KNOTT, LEE, LESLIE, OWSLEY, & PERRY COUNTIES

	Rates	Fringes
IRONWORKER, STRUCTURAL, REINFORCING AND ORNAMENTAL.....	\$ 24.03	10.19

IRON0769-013 06/01/2012		

BATH, ELLIOTT, FLEMING, LAWRENCE, LEWIS, MARTIN, MAGOFFIN,
MENIFEE, MORGAN & WOLFE COUNTIES and 5% EASTERN PART OF
NICHOLAS COUNTIES

	Rates	Fringes
IRONWORKER, ORNAMENTAL, REINFORCING AND STRUCTURAL.....	\$ 30.52	20.08

PLUM0248-007 06/01/2012		

BREATHITT, ELLIOTT, HARLAN, KNOTT, LAWRENCE, LEE, LESLIE,
LEWIS, MAGOFFIN, MARTIN, MENIFEE, MORGAN, OWSLEY, PERRY & WOLFE
COUNTIES

	Rates	Fringes
PIPEFITTER (Including HVAC Pipe Installation).....	\$ 33.00	16.93

PLUM0392-012 06/01/2012		

ROBERTSON COUNTY

	Rates	Fringes
PIPEFITTER (Including HVAC Pipe Installation).....	\$ 29.30	16.59

PLUM0452-006 11/01/2012		

BATH, FLEMING, HARRISON, MONTGOMERY & NICHOLAS COUNTIES

	Rates	Fringes
PIPEFITTER (Including HVAC Pipe Installation).....	\$ 30.00	15.47

SHEE0024-016 06/01/2010		

BATH, BREATHITT, ELLIOTT, FLEMING, HARLAN, KNOTT, LAWRENCE,
LESLIE, LEWIS, MAGOFFIN, MARTIN, MENIFEE, MORGAN, PERRY, &
WOLFE COUNTIES

	Rates	Fringes
SHEET METAL WORKER (Excluding HVAC Duct Installation).....	\$ 25.76	17.19

SHEE0110-020 12/01/2012

HARRISON, LEE, MONTGOMERY, NICHOLAS, OWSLEY, & ROBERTSON
COUNTIES

	Rates	Fringes
SHEET METAL WORKER (Excluding HVAC Duct Installation).....	\$ 28.66	17.46

SUKY2010-180 07/30/2010

	Rates	Fringes
CARPENTER (Drywall Hanging Only).....	\$ 14.52	2.91
CARPENTER (Form Work Only).....	\$ 17.96	10.32
CARPENTER, Excludes Drywall Hanging, and Form Work.....	\$ 16.20	4.70
CEMENT MASON/CONCRETE FINISHER...	\$ 22.84	8.41
ELECTRICIAN.....	\$ 23.18	8.16
LABORER: Common or General.....	\$ 14.01	4.34
LABORER: Mason Tender - Brick...	\$ 18.23	7.08
LABORER: Mason Tender - Cement/Concrete.....	\$ 12.48	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 21.36	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 23.54	0.00
OPERATOR: Bulldozer.....	\$ 21.40	0.00
OPERATOR: Loader (Front End)....	\$ 23.94	9.15
PAINTER: Brush and Roller.....	\$ 21.48	3.90
PLUMBER, Excludes HVAC Pipe Installation.....	\$ 18.86	8.52
ROOFER.....	\$ 16.42	1.50
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 12.77	3.07

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.
=====

Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification
and wage rates that have been found to be prevailing for the
cited type(s) of construction in the area covered by the wage
determination. The classifications are listed in alphabetical
order of "identifiers" that indicate whether the particular
rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with
characters other than "SU" denotes that the union
classification and rate have found to be prevailing for that
classification. Example: PLUM0198-005 07/01/2011. The first
four letters , PLUM, indicate the international union and the
four-digit number, 0198, that follows indicates the local union
number or district council number where applicable , i.e.,
Plumbers Local 0198. The next number, 005 in the example, is
an internal number used in processing the wage determination.
The date, 07/01/2011, following these characters is the
effective date of the most current negotiated rate/collective
bargaining agreement which would be July 1, 2011 in the above
example.

Union prevailing wage rates will be updated to reflect any
changes in the collective bargaining agreements governing the
rates.

0000/9999: weighted union wage rates will be published annually
each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived
from survey data by computing average rates and are not union
rates; however, the data used in computing these rates may
include both union and non-union data. Example: SULA2004-007
5/13/2010. SU indicates the rates are not union majority rates,
LA indicates the State of Louisiana; 2004 is the year of the
survey; and 007 is an internal number used in producing the
wage determination. A 1993 or later date, 5/13/2010, indicates

the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.

Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

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