

CLERMONT COUNTY

CTC FACILITY RENOVATION / IMPROVEMENT PHASE I

Project Location

Clermont Transportation Connection

4003 Filager Road
Batavia, Ohio 45103

Owner

Clermont County

101 East Main Street
Batavia, Ohio 45103

PROJECT MANUAL AND SPECIFICATIONS

June 15, 2010

MSA Project Number 09115.10

PERMIT DOCUMENTS VOLUME 1

Civil Engineer

Kleingers & Associates

6305 Centre Park Drive
West Chester, Ohio 45069

MEP Engineer

Heapy Engineering

1400 West Dorothy Lane
Dayton, Ohio 45049



Clermont Transportation Connection

Facility Renovation/Improvement
Phase I
Request for Bid



2010

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OVERVIEW

This Request for Bid (RFB) is being offered on behalf of the Board of Clermont County Commissioners, doing business as the Clermont Transportation Connection for the construction of Facility Renovation/Improvement Phase I for the Clermont Transportation Connection (CTC)

SECTION 1: REQUIRED CONTENTS OF ALL BIDS

All bids submitted in response to this RFB should be organized as follows and be sent in duplicate:

- 1.** A copy of this RFB
- 2.** Bid Proposal Form (Pricing per the specifications)
- 3.** Letter of Transmittal signed by an officer of the company or signed by another employee and accompanied by an affidavit of authority to bind the company.
- 4.** Completion of all Affidavits, Forms, & Certifications included in Section 4 of this request for bid.
- 5.** Bid Guaranty Bond/Bond Check
- 6.** Required Contractor Information/Qualifications

The Clermont Sun: ___/___/___

Legal Notice

The Board of Clermont County Commissioners will be accepting sealed bids for the project: **CTC Facility Renovation/Improvement Phase I** for the Clermont Transportation Connection. All bids shall be submitted in a sealed envelope marked: **Bid – CTC Facility Renovation/Improvement Phase I**, and must be received in the Office of the Board of County Commissioners, 101 E. Main Street, Batavia, Ohio 45103, no later than **2:00 P.M. Local Time on Monday, August 16th, 2010**, at which time all bids shall be opened and read publicly.

Instructions to bidders, specifications, and bid form outlining the terms and conditions of the proposed project may be obtained by interested bidders from: Benjamin S Capelle, 4003 Filager Road, Batavia, Ohio 45103, phone number 513-732-7577 during regular office hours which are 8:00am to 4:30pm Monday through Friday.

A bid bond in the amount of one hundred percent (100%) of the bid, or a certified check, cashier's check or letter of credit equal to 10% of the bid, must accompany the bid. The Board of County Commissioners reserves the right to waive any informalities, reject any or all bids and to hold such bids for a period of sixty (60) days before taking any action and to award a contract to the lowest and best bidder. Certified checks, cashier's checks, and bid bonds must be filed with original signatures. Facsimile and electronic copies of the certified checks, cashier's checks, or bid bonds and Power of Attorney of the Surety will be deemed non-responsive.

This notice is also posted on the contracting authority's internet site on the World Wide Web at the following address: www.co.clermont.oh.us In order to view the legal notice click on the link Legal Notices located on the Clermont County Home Page. The notice is also posted at www.ctc.clermontcountyohio.gov.

BOARD OF COUNTY COMMISSIONERS
CLERMONT COUNTY, OHIO

Robert L Proud, President
Edwin H. Humphrey, Vice President
R. Scott Crosswell III, Member
ATTEST:

Judith Kocica, Clerk of the Board

Bill to: Clermont Transportation Connection, Attn. Sandy Moell, 4003 Filager Road, Batavia, Ohio 45103

SECTION 2: GENERAL INSTRUCTIONS TO BIDDERS

1. **Bid Submittal:**

Reply to: **Board of County Commissioners
Clermont County
101 E. Main Street
Batavia, Ohio 45103**

All bids submitted for consideration by the Board of Clermont County Commissioners must comply with these instructions in order to be considered. These instructions set forth minimum requirements as to the terms and conditions of the public improvement. Therefore, if any time frames, bid bond or other surety requirements set forth herein are in conflict with stated requirements in the specifications, the specification requirements shall prevail.

2. **Schedule of Activities:** Bids Due and Opened: **Monday, August 16th, 2010 at 2:00 PM** local time at the Office of the Board of Clermont County Commissioners, 101 E. Main Street, Batavia, Ohio 45103-2960.
3. **Vendor Requirements:** It is required that the bidder have prior experience/expertise in the area pertaining to the bid proposal items listed in the Legal Notice.
4. **Foreign Corporations:** a “foreign corporation” means a corporation incorporated under the laws of another state. No contract shall be entered into with a foreign corporation until the Secretary of State has certified that such corporation is authorized to do business in Ohio; and until, if the bidder so awarded the contract is a person or partnership, it has filed with the Secretary of State a Power of Attorney designating the Secretary of State as its agent for the purpose of accepting service of summons in any action brought under Section 153.05 of the Ohio Revised Code or under sections 4123.01 to 4123.94, inclusive, of the Revised Code.
5. **Implied Requirements:** All products and services not specifically mentioned in the bid, but which are necessary to provide the functional capabilities described by the vendor, shall be included in the vendor’s base bid.
6. **Base and/or Alternate Bids:** Bids may contain descriptions of minor options or alternates which may be available to the County. Bid "A" will contain all products and services which are specifically mentioned in the bid request and all others necessary to provide the functional capabilities described by the vendor. Bid "A" shall be the Base Bid and is required by all bidders. Bids "B", "C" and so on will present options or alternatives that the vendor has available to the County. All bids must clearly identify and detail all costs on an item-by-item basis. Those bidders providing alternate bids must clearly distinguish such items as options. The County reserves the right to award a contract which includes the base bid and/or any combination of alternate bids submitted by any vendor or a multiple of vendors.
7. **Multiple Bids:** Bidders who wish to submit multiple bids may do so. It is required that

the bidder select one system as his "Base Bid (A)" and supply the complete information requested. If desired, the vendor may submit more than one base bid. Alternated bids will be indicated as alternate bids and lettered as "Bid B", Bid C", and so on.

8. **Indemnity:** Contractor hereby agrees to indemnify and hold the County harmless from any claims, demands or losses of any type or nature to any person, bidder or corporation arising in any manner from the contractor's performance or failure to perform the work required under this contract and shall pay any judgment or liability obtained or growing out of said claims, liabilities or judgments, including reasonable attorney's fees and costs.
9. **Vendor-supplied Materials:** Any material submitted by a vendor shall become the property of the County.
10. **Rejection of Bids:** The County reserves the right to reject any and all bids, to waive any informalities in the bidding procedure, to accept any bid which it deems to be for the best interest of the County and to hold such bids for a period of sixty (60) days before taking action to award a contract.
11. **Bid Identification and Submittal:** Bids shall be clearly marked on the envelope: "**Bid – CTC Facility Renovation/Improvement Phase I**" and include the bidders name and address. Bids must be in a sealed envelope submitted in duplicate (1 original and 1 copy). Replies must be received in the Office of the Board of County Commissioners no later than **2:00PM** local time on **Monday, August 16th, 2010**. Late Bids will not be considered. Bidders will not be permitted to alter their bids after bid closing. Should the bidder wish to mail in the bid, they should send them to the County at the address indicated in the legal notice and must be received by the County prior to the above date and time.
12. **Bid Opening:** Bid opening will occur at **2:00PM** local time on **Monday, August 16th, 2010**, at the Office of the Board of Clermont County Commissioners, 101 E. Main Street, Batavia, Ohio 45103-2960.
13. **Bid Bond:** Each Contractor bidding for a contract for the construction, demolition, alteration, repair or reconstruction of any public improvement is required to file with his bid, a bid guaranty in the form of either (1) a bond for the full amount of the bid or (2) a certified check, cashier's check or letter of credit pursuant Chapter 1305 of the Ohio Revised Code, in an amount equal to ten percent of the bid pursuant to Section 153.54 of the Ohio Revised Code.

The successful bidder, at the time he enters into the contract, shall be required to file a performance bond in the full amount of the contract pursuant to Section 153.54 (C) of the Ohio Revised Code. Letters of credit and bid bonds must be filled with original signatures. Facsimile and electronic copies of the letter of credit, bid bond and Power of Attorney of the Surety will be deemed non-responsive.

- a) Bid Bond form supplied herein (required form viii), titled "BID GUARANTY

AND CONTRACT BOND” (Section 153.571, Ohio Revised Code) is preferred by Clermont County. The use of the Bid Guaranty and Contract bond eliminates the need for the use of the performance bond and bid bond stated above.

- b) The amount of the Bid Guaranty and Contract bond must be in the full amount of the bid including Add Alternates.
 - c) The Bid Bond must be signed by an Authorized Agent of an acceptable Surety Bonding Company and by the Bidder. The Bid Bond must be countersigned by a Resident Agent (State of Ohio) of the Bonding Company as required by Section 5729.09 of the Ohio Revised Code. (Affix Corporate Seals to all copies). The name and address of both the Surety and Surety’s Agent must appear on Bid Bond.
 - d) Bid Bonds must be supported by:
 - i. Power of Attorney of the Agent, State of Ohio
 - ii. Certificate showing the legal right of the company to do business in the State of Ohio
 - e) The Bid Guaranty shall be payable to the Owner.
 - f) Bid Guarantees shall be returned to all unsuccessful bidders immediately after the contract is executed.
 - g) The Certified Check, Cashier’s Check, or Letter of Credit shall be returned to the successful bidder upon filing of the Bond required in Division (C), Section 153.54 of the Ohio Revised Code.
 - h) Bids may be rejected if all required papers are not returned with the bid. The bid bond shall be returned if said bid shall be rejected.
14. **Bid Duration:** All prices quoted by the bidder in their bid must remain unchanged for a period of sixty (60) days after the date of bid opening.
15. **Bid Suitability:** When analyzing the bids submitted, when applicable, superior design, technology, workmanship, materials, size of component parts, operating cost, warranty, service facility etc. will be considered in addition to price. It is Clermont County's intent to accept the bid for which a thorough analysis of the bids submitted, proves to be the most suitable for the intended use.
16. **Discounts:** Bidders may offer cash discounts for prompt payment of invoices, but their discounts will not be used in determining the final net prices bid. The County will endeavor to take advantage of such discounts if offered.
17. **Prices:** Unit price governs the award unless otherwise specified in the Request for Bid. When the award is based upon total prices, unit prices must be entered and extended by

multiplying the unit price by the quantity, and totaled on all items. The Clermont Transportation Connection may elect to extend or may correct the extension in order to arrive at a correct extended figure.

18. **Cost Liability:** The County assumes no responsibility, and no liability, for costs incurred by the prospective bidders for the purposes of preparing and submitting bids.
19. **Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization:** All bidders shall execute the form developed by the Ohio Department of Public Safety, Division of Homeland Security, in accordance with Section 2909.33 of the Ohio Revised Code and submit the completed form with their bid package in duplicate (one original and one copy with the copy stamped “copy”).
20. **Delivery:** Every effort shall be made by the Bidder awarded the contract to deliver items by or before the time designated in the contract. Any delinquency in such delivery without satisfactory written explanation directed to the Clermont County Commissioners may result in cancellation of the contract and substitution of other goods. The defaulting bidder shall be liable for any increased cost or expenses incurred as a result of such default.
21. **Performance:** The Board of County Commissioners reserves the right to require faithful performance of all things to be done under the contract and may require, as a condition of entering a purchase contract, lease, or lease with option to purchase, the bond provided for by Section 153.57 of the Revised Code, with good and sufficient surety in an amount not to exceed the amount of the bid.
22. **Materials:** Unless otherwise specified, all material shall be new and of the best grade in its particular line; all articles shall be complete and in first class condition; all articles shall include all applicable manufacturer’s warranties. Such warranty shall be reflected in the bid documents. All work shall be done in the best and most skilled manner, exactly as specified or detailed, and shall be subject to the approval of Clermont County officials. When required in the specifications, bidders shall make available for inspection, a sample or similar model of the bid items prior to the award of the bid.
23. **Subcontracting:** It is to be understood that no part of this bid shall be assigned, transferred, conveyed, sublet, or otherwise disposed of, without the expressed written approval of the Board of County Commissioners.
24. **Recommendations:** Reference to a particular trade name, manufacturer's catalog or model number are made for descriptive purposes to guide the bidder in interpreting the requirements of the County. They should not be construed as excluding proposals on other types of materials, equipment and supplies. However, the bidder, if awarded a contract, will be required to furnish the particular item referred to in the specifications or description unless a departure or substitution is clearly noted and described in the bid proposal.

25. **Type of Contract:** Bidders should be aware that the contract is to be of a fixed cost nature. Cost plus/percentage of cost contracts will not be acceptable.
26. **Exemption:** Clermont County is exempt from payment of Federal Excise Tax, Transportation Tax and Ohio State Tax. Prices shall not include these taxes.
27. **Receipt and Opening of Bids:** Any bid may be withdrawn prior to the scheduled time and date for the bid opening.
28. **Obligations of Bidder:** At the time of opening of bids, it shall be presumed that each bidder has reviewed the specifications to clear up any questions. The failure of any bidder to examine any bid requirement shall in no way relieve the bidder of any obligation or condition of these contract documents.
29. **Bidder Qualifications:** The County reserves the right to conduct any investigations that it deems necessary to establish the responsibility, qualifications and financial ability of the bidders, proposed subcontractors and other persons and organizations to do the work in accordance with the Contract documents to the County's satisfaction within the prescribed time limits. The bidder shall furnish the County any and all such information, documents and data for this purpose that the County may request. The County also reserves the right to reject any bid should the information submitted by or the investigation of such bidder fails to satisfy the County that such bidder is sufficiently qualified to carry out any and all obligations of the contract.
30. **Statements of Conditionality:** Bids which contain statements of conditionality will not be accepted.
31. **Each bid shall include:** a letter of transmittal which bears the signature of the President, Vice-President, or any other Officer or Official as long as accompanied by affidavit of authority to bind the vendor.

All bidders are required to submit the following affidavits/required forms with their bid proposal:

- i. Non-Collusion Affidavit of Prime Bidder
- ii. Ineligible Contractors Certificate
- iii. Certification Regarding Lobbying Pursuant to 49 CFR part 20
- iv. Affidavit in Compliance with Sections 9.24 and 5719.042 of the Ohio Revised Code
- v. Affidavit in Compliance with Section 3517.13 of the Ohio Revised Code
- vi. Buy America Certification: Certification Requirement for Procurement of Steel, Iron, Manufactured Products, or Construction Contracts over \$100,000
- vii. Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization
- viii. Guaranty Bond for County Contracts, Clermont County Ohio

ix. American Recovery & Reinvestment Act Project Employment Information

These affidavits and specifications heretofore referenced shall be incorporated into and become a part of the Contract document.

Each bidder shall complete and submit the Required Contractor Information as specified in Article 4 of this bid packet.

- 32. Property:** All materials and exhibits submitted in the bid response shall become the property of Clermont County and will not be returned to the bidder. All bids received constitute public information as a matter of statutory law and will be made available for public inspection and copying upon request by members of the public pursuant to the requirements of Section 149.43 of the Ohio Revised Code. Any portion of the bid that the bidder requires to be treated as confidential in nature must be marked to that effect and, provided that the information falls within an appropriate exemption enumerated under Section 149.43 of the Ohio Revised Code, that portion will not be considered public record. A blanket indication of confidentiality or privilege will not be accepted and unless specific materials that fall within the appropriate statutory exemption are identified, the entire bid response will be treated as a public record.

**SECTION 3: SOLICITATION PROVISIONS/REQUIRED
CONTRACT CLAUSES**

1.0 Contract Subject to Federal Financial Assistance/Application of Provisions and Clauses

Operation of the Clermont Transportation Connection is funded in part by grants from the Federal Transit Administration (FTA) of the United States Department of Transportation. The award of any contract is subject to the requirements of financial assistance contracts between the Clermont Transportation Connection (hereinafter referred to as CTC) and the U.S. Department of Transportation requiring compliance with purchasing procedures and standards as set forth in various federal statutes and regulations including OMB Circular A-102, 49 CFR Part 18, and FTA Circular 4220.1E. The Contractor is required to comply with all terms and conditions prescribed for third-party contracts by the U.S. Department of Transportation, Federal Transit Administration (FTA).

The following solicitation provisions and required contract clauses, except those identified below as not applicable to this solicitation and any resulting contract, will be incorporated by reference in any contract resulting from this Solicitation issued by CTC. These solicitation provisions and required contract clauses are in addition to other General Specifications, Special and Technical Specifications, Bidding or Proposal Procedures, and Bid or Proposal Forms set forth in other sections of this Solicitation which may also be incorporated by reference in any resulting contract. Some provisions and clauses require the bidder/proposer to execute and submit certain required certifications with the bid or proposal, which are included herein. Failure to execute and submit required certifications with the bid or proposal documents may render a bid or proposal non-responsive.

1.1 Non-Collusion; Affidavits

The bidder guarantees that the bid submitted is not a product of collusion with any other bidder and that it has not been communicated by the bidder to anyone not an employee or agent or surety of the bidder. Bidders are required to furnish a Federal Non-collusion Affidavit. Failure to submit the signed affidavit at the time of bid opening shall be grounds for disqualification of the bidder's bid.

1.2 Ineligible Bidders; Certification

The bidder certifies that it is not included in the U.S. Comptroller General's List of Ineligible Contractors Debarred for Violations of Labor Standards Provisions. Bidders are required to furnish a signed Ineligible Contractors Certificate. Failure to submit the certificate at the time of bid opening shall be grounds for the disqualification of the bidder's bid.

The following provision is applicable to any contract or subcontract in excess of \$100,000:

1.3 Certification Regarding Debarment, Suspension, and Other Responsibility Matters Lower Tier Covered Transactions. (Third Party Contracts Over \$100,000)

Instructions for Certification

- 1.3.1 By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
- 1.3.2 The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, CTC may pursue available remedies, including suspension and/or debarment.
- 1.3.3 The prospective lower tier participant shall provide immediate written notice to CTC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 1.3.4 The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact CTC for assistance in obtaining a copy of those regulations.
- 1.3.5 The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by CTC.
- 1.3.6 The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 1.3.7 A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.

1.3.8 Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

1.3.9 Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, CTC may pursue available remedies including suspension and/or debarment.

1.3.10 The certification language is as follows:

“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.”

The following provision is applicable to any contract or subcontract in excess of \$100,000:

1.4 Lobbying

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying," included herein. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to CTC.

1.5 Interest of Members of, or Delegates to, Congress

No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising there from (41 U.S.C. 22).

1.6 Prohibited Interest

No member, officer, or employee of CTC or local public official during his tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

1.7 Covenant Against Gratuities

The Contractor shall not offer or provide gifts, favors, entertainment or any other gratuities of monetary value to any official, employee, or agent of CTC during the period of this contract or for a period of one year thereafter.

1.8 Program Fraud and False or Fraudulent Statements and Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 *et seq* . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

1.9 Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

EEO, CIVIL RIGHTS, DISADVANTAGED BUSINESS ENTERPRISE

1.10 Title VI, Civil Rights Act of 1964, Compliance

During the performance of this contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1.10.1 Compliance with Regulations: The Contractor shall comply with the regulations relative to non-discrimination in federal programs of the Department of Transportation (hereinafter referred to as "Regulations"), which are incorporated by reference and made a part of this contract.

1.10.2 Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

1.10.3 Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to

ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (a) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (b) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (c) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

1.11 Disadvantaged Business Enterprise, 49 CFR Part 23

The Federal Fiscal Year goal has been set by the CTC in an attempt to match projected procurements with available qualified disadvantaged businesses. The CTC's goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by CTC as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, CTC may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

1.11.1 Policy - It is the policy of the Department of Transportation and CTC that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as

amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of CTC to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of CTC's procurement activities is encouraged.

- 1.11.2 DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.
- 1.11.3 Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, CTC may declare the contractor noncompliant and in breach of contract.
- 1.11.4 The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with CTC's DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of CTC and will be submitted to CTC upon request.
- 1.11.5 CTC will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation.

The assistance may include the following upon request:

- * Identification of qualified DBE
- * Available listing of Minority Assistance Agencies
- * Holding bid conferences to emphasize requirements

DBE Program Definitions, as used in the contract:

- (a) Disadvantaged business "means a small business concern":
- (a) i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
 - ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- or
- iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and
 - iv. Whose management and daily business operations are controlled by one or more women individuals who own it.
- (b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.
- (c) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.
- i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;
 - ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;
 - v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

1.12 Access Requirements for Individuals with Disabilities

The CTC agrees to comply with the requirements of 49 U.S.C. § 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. CTC also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto. In addition, CTC agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (10) Any implementing requirements FTA may issue.

LABOR PROVISIONS

1.13 Contract Work Hours and Safety Standards Act

(1) Overtime requirements - No Bidder or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such

laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the Bidder and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Bidder and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - ORT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Bidder or subcontractor under any such contract or any other Federal contract with the same prime Bidder, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Bidder, such sums as may be determined to be necessary to satisfy any liabilities of such Bidder or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The Bidder or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors include these clauses in any lower tier subcontracts. The prime Bidder shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

1.14 Davis-Bacon & Copeland Anti-Kickback Acts (29 CFR Section 5.5)

Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

(1) Minimum wages

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide

fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Bidder and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Bidder and its subbidders at the site of the work in a prominent and accessible place where it can be easily seen by the workers. (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed. (B) If the Bidder and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the Bidder, the laborers or mechanics to be

employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination.

The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Bidder shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the Bidder does not make payments to a trustee or other third person, the Bidder may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Bidder, that the applicable standards of the Davis-Bacon Act have been met.

The Secretary of Labor may require the Bidder to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination.

The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Bidder and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Bidder, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the

questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (2) Withholding - ORT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Bidder under this contract or any other Federal contract with the same prime Bidder, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Bidder, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Bidder or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, ORT may, after written notice to the Bidder, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the Bidder during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Bidder shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Bidders employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees,

and the ratios and wage rates prescribed in the applicable programs. (ii)(A) The Bidder shall submit weekly for each week in which any contract work is performed a copy of all payrolls to ORT for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402.

The prime Bidder is responsible for the submission of copies of payrolls by all subcontractor. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Bidder or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section. (D) The falsification of any of the above certifications may subject the Bidder or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The Bidder or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

If the Bidder or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Bidder, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training

Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Bidder as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Bidder is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Bidder's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Bidder will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless

the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the Bidder will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The Bidder shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract. (6) Subcontracts - The Bidder or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Bidder shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5. (7)

Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Bidder and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7.

Disputes within the meaning of this clause include disputes between the Bidder (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the Bidder certifies that neither it (nor he or she) nor any person or firm who has an interest in the Bidder's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible

for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

1.14.2.10 **Certification of eligibility**

1.14.2.10.1 By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

1.14.2.10.2 No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

1.14.2.10.3 The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

ENVIRONMENTAL, RESOURCE, ENERGY PROTECTION, CONSERVATION, AND SAFETY REQUIREMENTS

1.15 Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

The following clause applies to any contract or subcontract in excess of \$100,000:

1.16 Clean Air

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

The following clause applies to any contract or subcontract in excess of \$100,000:

1.17 Clean Water

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251

et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

1.18 Air Pollution, 40 CFR Parts 84, 85, 86, and 600, Vehicle Purchases

In submitting its bid and executing a contract, Contractor assures that facilities or equipment (including motor vehicles) furnished, constructed or improved under the contract are or will be designed and equipped to limit air pollution as provided in accordance with EPA regulations as contained in 40 CFR Parts 84, 85, and 86 (Control of Air Pollution from Motor Vehicles and Engines) and 40 CFR Part 600 (Fuel Economy of Motor Vehicles) and all other applicable standards. For vehicle purchases the successful bidder may be required to submit Certification to CTC that the governing air pollution criteria has been met. This evidence and certification will be retained by CTC.

1.19 Federal Motor Vehicle Safety Standards (FMVSS), 49 CFR Part 500, Vehicle Purchases

Contractor (whether manufacturer or dealer) certifies that the vehicles to be supplied under the contract shall conform to all applicable Federal Motor Vehicle Safety Standards of the U.S. Department of Transportation, National Highway Traffic Safety Administration, and are certified by installation of the required certification plate.

1.20 New Bus Testing, 49 CFR Part 655, Bus Purchases

Contractor will comply with the regulations pertinent to New Vehicle Testing Requirements (49 CFR 655). New models and modified vehicles (as defined by the regulations) shall be certified to have been tested in accordance with the applicable regulations. If the vehicle is a model, which is not required to be tested, the contractor shall so certify. Bidders not certifying compliance with this requirement may be considered non-responsive. Bidders will be required to submit test results as a part of their bid package, if available at the time bid documents are submitted. Final test results shall be required prior to award of a contract.

1.21 Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

1.22 Seismic Safety Requirements (NOT APPLICABLE)

OTHER STATUTORY REQUIREMENTS

1.23 Access to Records and Reports

- 1.23.1 Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- 1.23.2 Where the Purchaser is a State and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- 1.23.4 Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- 1.23.5 Where any Purchaser which is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- 1.23.6 The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

1.23.7 The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

1.24 Buy America Provision:

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to CTC the appropriate Buy America certification (Buses, Rolling Stock or Related Equipment) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

1.24.1 Required Use of American Iron, Steel, and Manufactured Goods--Section 1605 of the American Recovery and Reinvestment Act of 2009.

This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph 2 CFR 176.140 (b)(3) and 2 CFR 176.140 (b)(4). This requirement does not apply to the material listed by the Federal Government under 2 CFR 176.140(b)(2).

A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) should submit the request to the U.S. Federal Transit Administrator in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by paragraphs at 2 CFR 176.140(c) and (d) in the request. If an applicant has not

requested a determination regarding the inapplicability of 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.”

1.25 Cargo Preference: Use of United States Flag Vessels, 46 CFR, Part 381

The contractor agrees:

1.25.1 To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

1.25.2 To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of lading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to CTC (through the contractor in the case of a subcontractor's bill-of-lading.)

1.25.3 To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

1.26 “Fly America” Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

1.27 Patent Rights (NOT APPLICABLE)

1.28 Rights in Data and Copyrights (NOT APPLICABLE)

1.29 Privacy (NOT APPLICABLE)

1.29.A **PROTEST PROCEDURES**

1.29.1 General - Protests may be made by prospective bidders or proposers whose direct economic interest would be affected by award of a contract or by failure to award a contract. CTC will consider all protests requested in a timely manner regarding the award of a contract, whether submitted before or after an award. All protests are to be submitted in writing to: Clermont Transportation Connection, 4003 Filager Rd., Batavia, Ohio, 45103. Protest submissions should be concise, logically arranged, and clearly state the grounds for protest. A protest must include at least the following information:

- (a) name, address, and telephone number of protestor,
- (b) identification of contract solicitation number,
- (c) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents, and
- (d) a statement as to what relief is requested.

Protests must be submitted to CTC in accordance with these procedures and time requirements, must be complete and contain all issues that the protestor believes relevant.

In the procedures outlined below, the Director is considered to be the Contracting Officer.

1.29.2 Protests Before Bid Opening - Bid protests alleging restrictive specifications or improprieties which are apparent prior to bid opening or receipt of proposals must be submitted in writing to the Contracting Officer at the address above and must be received at least seven (7) days prior to bid opening or closing date for receipt of bids or proposals. If the written protest is not received by the time specified, bids or proposals may be received and award made in the normal manner unless the Contracting Officer determines that remedial action is required. Oral protests not followed up by a written protest will be disregarded. The Contracting Officer may request additional information from the appealing party and information or response from other bidders, which shall be submitted to the Contracting Officer not less than ten (10) days after the date of CTC's request. So far as practicable, appeals will be decided based on the written appeal, information and written response submitted by the appealing party and other bidders. In failure of any

party to timely respond to a request for information, it may be deemed by CTC that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response, and in such a case, the protest will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent evaluation deemed appropriate by CTC, the Contracting Officer shall either (a) render a decision, or (b) at the sole election of the Contracting Officer, conduct an informal hearing at which the interested parties will be afforded opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, if one is held, the Contracting Officer will render a decision, which shall be final, and notify all interested parties thereof in writing but no later than ten (10) days from the date of informal hearing.

1.29.3 Protests After Bid Opening/Prior to Award - Bid protests against the making of an award by the CTC must be submitted in writing to the Contracting Officer and received within seven (7) days of the bid opening by the CTC. Notice of the protest and the basis therefore will be given to all bidders or proposers. In addition, when a protest against the making of an award by the CTC is received and it is determined to withhold the award pending disposition of the protest, the bidders or proposers whose bids or proposals might become eligible for award shall be requested, before expiration of the time for acceptance, to extend or to withdraw the bid. Where a written protest against the making of an award is received in the time period specified, award will not be made prior to seven (7) days after resolution of the protest unless CTC determines that:

- (a) the items to be purchased are urgently required
- (b) delivery or performance will be unduly delayed by failure to make award promptly, or
- (c) failure to make award will otherwise cause undue harm to CTC or the federal government.

1.29.4 Protests After Award - In instances where the award has been made, the Contractor shall be furnished with the notice of protest and the basis therefore. If the contractor has not executed the contract as of the date the protest is received by CTC, the execution of the contract will not be made prior to seven (7) days after resolution of the protest unless CTC determines that:

- (a) the items to be purchased are urgently required
- (b) delivery or performance will be unduly delayed by failure to make award promptly, or

(c) failure to make award will otherwise cause undue harm to CTC or the federal government.

1.29.5 Protests to Federal Transit Administration (FTA) - Under certain limited circumstances, an interested party may protest to the FTA the award of a contract pursuant to an FTA grant. FTA's review of any such protest will be limited to:

- (a) alleged failure by CTC to have written protest procedures or alleged failure to follow such procedures, or
- (b) alleged violations of specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation.

Protestors shall file a protest with FTA not later than five (5) working days after a final decision of CTC's Contracting Officer is rendered under the CTC protest procedure. In instances where the protestor alleges that CTC failed to make a final determination on the protest, the protestor shall file a complaint with FTA no later than five (5) federal working days after the protestor knew or should have known of CTC's failure to render a final determination in the protest.

1.29.6 Submission of Protest to FTA - Protests submitted to FTA should be submitted to the FTA Region 5 Office in Chicago, Illinois with a concurrent copy to CTC. The protest filed with FTA shall:

- (a) include the name and address of the protestor
- (b) identify the CTC project number and the number of the contract solicitation
- (c) contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow CTC's protest procedures, or the alleged failure to have procedures, and be fully supported to the extent possible
- (d) include a copy of the local protest filed with CTC and a copy of the CTC decision, if any.

1.30 Notice of Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of

this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

1.31 Compliance with Laws/Permits and Licenses

Contractor will give all notices and comply with all federal, State, County, and local laws, ordinances, rules, regulations, standards, and order of any public authority bearing on the performance of the contract, or concerning the production of goods there under, including, but not limited to, the laws referred to in these provisions of the contract and the other contract documents. If the contract documents are at variance therewith in any respect, any necessary changes shall be adjusted by appropriate modification. Omission of any applicable laws, ordinances, rules, regulations, standards, or orders by CTC in the contract documents shall be construed as an oversight and shall not relieve the Contractor from his obligations to meet such fully and completely. Upon request, the Contractor shall furnish to CTC certificates of compliance with all such laws, orders and regulations. The Contractor shall be responsible for obtaining all necessary permits and licenses required for performance under the contract.

Applicable provisions of all federal, State, County, and local laws, and of all ordinances, rules, and regulations shall govern any and all claims and disputes which may arise between person(s) submitting a bid response hereto and CTC by and through its officers, employees, and authorized representatives, or any other persons, natural and otherwise, and lack of knowledge by any Contractor shall not constitute a cognizable defense against the legal effect thereof.

1.32 Records Retention/Audit and Inspection of Records

1.32.1 The Contractor shall permit the authorized representatives of CTC, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of the Contractor relating to its performance under the contract until the expiration of three years after final payment under this contract.

1.32.2 The Contractor further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that CTC, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any books, documents, papers, and records of the subcontractor directly pertinent to this contract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

1.32.3 The periods of access and examination described above, for records which relate to (1) appeals under the dispute clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs

and expenses of this contract to which an exception has been taken by the U.S. Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

1.33 Contract Changes

Any proposed change in this contract shall be submitted to CTC for its prior approval and CTC will make changes only by written contract modification.

CTC may, at any time, by a written order, and without notice to sureties, make changes, within the general scope of this contract, in any one or more of the following: (1) drawings, designs or specifications; (2) method of shipment or packing; and (3) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for the performance of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified accordingly. Any claim for adjustment under this clause shall be asserted within 30 days from the date of receipt by the Contractor of the notification of change: Provided, however, that CTC, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact; however, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

1.34 No Government Obligation to Third Parties

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

1.35 Incorporation Of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any State requests, which would cause the State to be in violation of the FTA terms and conditions.

SECTION 4: REQUIRED AFFIDAVITS, FORMS, & CERTIFICATIONS

Required Form i.

FEDERAL NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

STATE OF _____)
COUNTY OF _____)

_____, being first duly sworn, deposes and says that:

1. They are _____ of _____
(Owner, partner, officer, representative or agent)
the Bidder that has submitted the attached Bid:
2. They are fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such Bid:
3. Such Bid is genuine and is not a collusive or sham Bid:
4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this Affidavit, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder or to fix any overhead, profit or cost element of the Bid price or Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Clermont County or any person interested in the proposed Contract: and
5. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this Affidavit.

Signature

Title

Sworn to before me and subscribed in my presence this ____ day of _____, 20____.

Notary Public

My Commission expires: ____/____/20____

Required Form ii.

INELIGIBLE CONTRACTORS CERTIFICATE

"The _____ (name of the third party contractor) hereby certifies that it IS / IS NOT (circle one) included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations for Various Public Contracts Incorporating Labor Standard Provisions.

COMPANY NAME: _____

AUTHORIZED OFFICIAL: _____

TITLE: _____

SIGNATURE: _____

DATE: _____

Required Form iii.

CERTIFICATION REGARDING LOBBYING PURSUANT TO 49 CFR PART 20

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

Required Form iv.

AFFIDAVIT IN COMPLIANCE WITH SECTIONS 9.24 AND 5719.042 OF THE OHIO
REVISED CODE

STATE OF _____

SS:

COUNTY OF _____

Personally appeared before me the undersigned, a bidder in a competitive bidding
for _____
(Name of Firm)

for a _____ contract let by the County of Clermont, who, being
(Type of Product or Service)

duly cautioned and sworn, makes the following statement with respect to the personal property
taxes on the general tax list of personal property of Clermont County, Ohio:

1. That the undersigned at the time of making this bid on the
aforementioned contract was not charged with any delinquent personal property
taxes on the general tax list of personal property of Clermont County.

2. That this statement is made in compliance with Section 5719.042
to be incorporated into the contract between the parties as provided in that Section
of the Ohio Revised Code.

3. That pursuant to §9.24 of the Ohio Revised Code, if the project for
which this bid is submitted has been identified as being funded in whole or in part
with funds from the State of Ohio, the affiant further certifies that the bidder, if an
individual, or if a corporation, any principal owning more than 10% equitable
interest in the corporation, does not have a finding for recovery issued by the
Auditor of State which remains unresolved as defined in §9.24 ORC.

Signature: _____

Title: _____

Subscribed and sworn before me this _____ day of _____, 20_____

Notary Public _____,

Printed Name of Notary: _____

My Commission expires: _____.

one or more campaign contributions totaling in excess of \$2,000, to any member of the Clermont County Board of Commissioners or their individual campaign committees, or if the contracting authority is another elected official of Clermont County, to that official or their individual campaign committee:

- a. myself;
- b. any partner or owner or shareholder of the partnership (if applicable);
- c. any owner of more than 20% of the corporation or business trust (if applicable);
- d. each spouse of any person identified in (a) through (c) of this section;
- e. each child seven years of age to seventeen years of age of any person identified in divisions (a) through (c) of this section.

3. That this representation is made to induce the County to enter into a contractual relationship with the Contractor, and with the knowledge that County officials will rely on the authenticity of statements made herein in awarding and administering such contracts.

Signature_____

Title:_____

Sworn to before me and subscribed in my presence this _____ day of _____, 20__.

Notary Public _____

My Commission Expires: _____

Required Form vi.

**BUY AMERICA CERTIFICATION
CERTIFICATION REQUIREMENT FOR PROCUREMENT OF STEEL, IRON,
MANUFACTURED PRODUCTS, OR CONSTRUCTION CONTRACTS OVER \$100,000**

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Title: _____

Company Name _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Title _____

Company Name _____

Required Form vii.

Ohio Department of Public Safety
Division of Homeland Security
<http://www.homelandsecurity.ohio.gov>

GOVERNMENT BUSINESS AND FUNDING CONTRACTS

In accordance with section 2909.33 of the Ohio Revised Code

DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO A TERRORIST ORGANIZATION

This form serves as a declaration of the provision of material assistance to a terrorist organization or organization that supports terrorism as identified by the U. S. Department of State Terrorist Exclusion List (see the Ohio Homeland Security Division website for a reference copy of the Terrorist Exclusion List).

Any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided. Failure to disclose the provision of material assistance to such an organization or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree.

For the purposes of this declaration, "material support or resources" means currency, payment instruments, other financial securities, funds, transfer of funds, and financial services that are in excess of one hundred dollars, as well as communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

LAST NAME		FIRST NAME		MIDDLE INITIAL	
HOME ADDRESS					
CITY		STATE		ZIP	COUNTY
HOME PHONE			WORK PHONE		

COMPLETE THIS SECTION ONLY IF YOU ARE A COMPANY, BUSINESS OR ORGANIZATION

BUSINESS/ORGANIZATION NAME					
BUSINESS ADDRESS					
CITY		STATE		ZIP	COUNTY
PHONE NUMBER					

DECLARATION

In accordance with division (A) (2) (b) of section 2909.32 of the Ohio Revised Code

For each question, indicate either "yes" or "no" in the space provided. Responses must be truthful to the best of your knowledge.

1. Are you a member of an organization on the U.S. Department of State Terrorist Exclusion List?

Yes No

2. Have you used any position of prominence you have with any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List?

Yes No

GOVERNMENT BUSINESS AND FUNDING CONTRACTS – CONTINUED

3. Have you knowingly solicited funds or other things of value for an organization on the U.S. Department of State Terrorist Exclusion List?
 Yes No

4. Have you solicited any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List?
 Yes No

5. Have you committed an act that you know, or reasonably should have known, affords "material support or resources" to an organization on the U.S. Department of State Terrorist Exclusion List?
 Yes No

6. Have you hired or compensated a person you knew to be a member of an organization on the U.S. Department of State Terrorist Exclusion List, or a person you knew to be engaged in planning, assisting, or carrying out an act of terrorism?
 Yes No

In the event of a denial of a government contract or government funding due to a positive indication that material assistance has been provided to a terrorist organization, or an organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List, a review of the denial may be requested. The request must be sent to the Ohio Department of Public Safety's Division of Homeland Security. The request forms and instructions for filing can be found on the Ohio Homeland Security Division website.

CERTIFICATION

I hereby certify that the answers I have made to all of the questions on this declaration are true to the best of my knowledge. I understand that if this declaration is not completed in its entirety, it will not be processed and I will be automatically disqualified. I understand that I am responsible for the correctness of this declaration. I understand that failure to disclose the provision of material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List, or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree. I understand that any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided by myself or my organization. If I am signing this on behalf of a company, business or organization, I hereby acknowledge that I have the authority to make this certification on behalf of the company, business or organization referenced on page 1 of this declaration.

X _____
Signature

Date

Required Form viii.

BID GUARANTY AND CONTRACT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned,

(Here insert full name or legal title Of Contractor)

as Principal and

(Here insert full name or legal title of Surety)

as Surety, are hereby held and firmly bound, unto the Board of Clermont County Commissioners, Clermont County, Ohio hereinafter called the Obligee in the penal sum of the dollar amount of the bid submitted by the Principal to the Obligee on

to undertake the project known as:

(Date)

Contract No. _____

Contract Name _____

The penal sum referred to herein shall be the dollar amount of the Principal's Bid to the Obligee, incorporating any additive or deductive alternate proposals made by the Principal on the date referred to above to the Obligee; which are accepted by the Obligee. In no case; shall

the penal sum exceed the amount of

Dollars (\$ _____). (If the above line is left blank, the penal sum will be the full amount of the Principal's Bid, including alternates. Alternatively, if completed, the amount stated must not be less than the full amount of Bid, including alternates, in dollars and cents. A percentage is not acceptable.)

For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named Principal has submitted a bond on the above referred to project;

NOW, THEREFORE, if the Obligee accepts the bid of the Principal: and the Principal fails to enter into a proper contract in accordance with the plans, details, specifications, contract documents, and bills of material; and in the event the Principal pays to the Obligee the difference not to exceed ten percent of the penalty hereto between the amount specified in the bid and such larger amount for which the Obligee may in good faith contract with the next lower bidder to perform the work covered by the bid; or in event, the Obligee does not award of the contract to the next lower bidder and resubmits the project for bidding, the Principal will pay the Obligee the difference, not to exceed ten percent of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect.

If the Obligee accepts the bid of the Principal and the Principal, within ten days after the awarding of the contract, enters into a proper contract in accordance with the bid, plans, details; specifications, and bills of material, which said contract, is made a part of this bond the same as though set forth herein; and if the said Principal shall well and faithfully perform each and every condition of such contract; and indemnify the Obligee against all damage suffered by failure to perform such contract according to the provisions thereof and in accordance with the plans, details, specifications, and bills of material therefore; and shall pay all lawful claims of subcontractors, material man, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for benefit of any material man or laborer having just claim, as well as for the Obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunto shall in no event exceed the penal amount of this obligation as herein stated.

The said Surety hereby Stipulates and agrees that no modifications, omissions, or: additions, in or to the terms of said contract or in or to the plans and specifications therefore shall in any way affect the obligations of Said Surety on this bond, and it does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications

SIGNED AND SEALED this _____ day of _____, 20____

Principal: _____

By: _____

Address: _____

Surety: _____

Attorney-in-Fact: _____

Surety Company Address: _____

Surety Agent's Name and Address: _____

Required Form ix.

American Recovery & Reinvestment Act Project Employment Data

This project is funded by the American Recovery & Reinvestment Act (ARRA) of 2009 (Stimulus), which requires the reporting of employment data which is funded by the ARRA. The following section must be completed for your bid to be accepted.

Number of Jobs Created: _____

Number of Jobs Saved/Maintained: _____

Total Job Hours Created: _____

Total Job Hours Saved/Maintained: _____

Total Payroll Amount Created: \$_____

Total Payroll Amount Saved/Maintained: \$_____

We realize this data is difficult to attain, please be as accurate as possible.

SECTION 5: BID PROPOSAL FORM & CONTRACT

BID FORM

Project Name: **CTC Facility Renovation / Improvement Phase I**

Location of Project & City: **4003 Filager Road, Batavia, OH 45103**

Company Name of Bidder: _____

To: Clermont County Board of Commissioners
101 East Main Street
Batavia OH 45103

Having read and examined the Contract Documents, including without limitation the Drawings and Specifications, prepared by the Architect for the above-referenced Project, and the following Addenda:

Addendum Number	Date of Receipt
_____	_____
_____	_____
_____	_____

(Failure to acknowledge receipt of all Addenda may cause rejection of the bid.)

The Contractor acknowledges that all Work shall be completed within the time established in the Contract Documents, and that each applicable portion of the Work shall be completed upon the respective milestone completion dates, unless an extension of time is granted in accordance with the Contract Documents. **Also, the Contractor understands and acknowledges that the assignment of Work as defined in Section 011200 of the Project Manual shall prevail over the scope of Work assignments within the Plans and Specifications.** The undersigned Bidder proposes to perform all Work for the applicable Contract, in accordance with the Contract Documents, for the following sums:

ITEM 1. CONTRACT #1, GENERAL TRADES

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____

ITEM 2. CONTRACT #2, HVAC

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____

ITEM 3. CONTRACT #3, PLUMBING

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____

ITEM 4. CONTRACT #4, ELECTRIC

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____

ITEM 5. COMBINATION BID OF THE FOLLOWING BID ITEMS

(Clearly indicate by bid item number for all bid items included)

Item No _____

Item No _____

Item No _____

TOTAL LUMP SUM COMBINATION BASE BID:

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____

Bidders submitting a combination bid under Bid Item No. 5 **shall** submit a bid for each of the individual bid items included in the combination bid, and be prepared to perform the Work of the individual bid item if deemed to be the lowest responsive, responsible bid.

PROPOSED SUBCONTRACTOR DECLARATION

Contractor shall list any and all proposed subcontractors for “technology system” installation (includes cabling, telephone, AV, data infrastructure) that may be incorporated into the project, as a part of this combination bid.

CONTRACTOR NAME

SCOPE

ALTERNATES

ITEM 6. ADD ALTERNATE NO. 1: Additional paving and associated fencing at Bus Parking.

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____

ITEM 7. ADD ALTERNATE NO. 2: Include selective demolition at Bus Parking.

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____

ITEM 8. ADD ALTERNATE NO. 3: Include selective demolition at CTC Administration Building.

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____

ITEM 9. ADD ALTERNATE NO. 4: Install Owner supplied porcelain floor tile, carpet tile and resilient base at CTC Administration Building.

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____

ITEM 10. ADD ALTERNATE NO. 5: Perform interior painting with Owner supplied paint at CTC Administration Building.

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____

ITEM 11. ADD ALTERNATE NO. 6: Provide extruded aluminum walkway covers with powder-coat finish in lieu of coil formed aluminum walkway covers with painted finish at CTC Administration Building.

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____

ITEM 12. ADD ALTERNATE NO. 7: Provide (second) electronically controlled sliding gate, associated additional paving and storm drainage at Bus Parking.

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____

UNIT PRICES

ITEM 13. Unit price for each cubic yard (CY) of soil excavated and removed from site. Unit price shall include all labor, material, equipment, overhead and profit. Same unit price shall apply for added or deleted Work.

_____ Dollars (\$ _____)

ITEM 14: Unit price for each cubic yard (CY) of heavy duty asphalt pavement, placed at the site. Unit price shall include all labor, material, equipment, overhead and profit. Same unit price shall apply for added or deleted Work.

_____ Dollars (\$ _____)

COMPLETION

It is agreed and understood that the work embodied in this specification and shown on the drawings shall be completed commensurate with good workmanship and management and completed satisfactorily on or before the milestone dates set forth in "Section 011000-Summary". A construction schedule must be submitted by the lead contractor and approved by the Architect prior to the Notice to Proceed.

Bids submitted under this proposal are acknowledged by the Owner to be made under conditions that the Contractor shall not be prevented, due to strikes or other interruptions affecting sources of supplies or normal progress of work, from obtaining materials or labor necessary to carry out his contract or to complete the work, and timely access to the premises to execute the work.

BIDDER'S CERTIFICATION

The Bidder hereby acknowledges that the following representations in this bid are material and not mere recitals:

1. Bidder has read and understands the Contract Documents and agrees to comply with all requirements of the Contract Documents, regardless of whether the Bidder has actual knowledge of the requirements and regardless of any statement or omission made by the Bidder which might indicate a contrary intention.
2. The Bidder represents that the bid is based upon the Standards specified by the Contract Documents.
3. The Bidder has visited the Project site, become familiar with local conditions and has correlated personal observations about the requirements of the Contract Documents. The Bidder has no outstanding questions regarding the interpretation of the Contract Documents.
4. The Bidder understands that the award of separate contracts for the Project will require sequential, coordinated and interrelated operations which may involve interference, disruption, hindrance or delay in the progress of the Bidder's Work. The Bidder agrees that the Contract price, as amended from time to time, shall cover all amounts due from the Owner resulting from interference, disruption, hindrance or delay caused by or between Contractors or their agents and employees.

The Bidder agrees that any such interference, disruption, hindrance or delay is within the contemplation of the Bidder and the Owner and that the Contractor's sole remedy for such interference, disruption, hindrance or delay shall be an extension of time in accordance with the Contract Documents. This provision is intended to be, and shall be construed as, consistent with and not in conflict with, Section 4113.62, ORC.

5. During the performance of the Contract, the Bidder agrees to comply with OAC Chapters 123:2-3 through 123:2-9 and agrees to incorporate the provisions contained in the Governor's January 27, 1972 Executive Order into all subcontracts on the Project, regardless of tier. The Bidder understands the State Equal Opportunity Center may conduct pre-award and post-award compliance reviews to determine if the Bidder maintains nondiscriminatory employment practices, maintains an affirmative action program and is exerting good faith efforts to accomplish the goals of the affirmative action program. For a full statement of the rules regarding Equal Employment Opportunity in the Construction Industry, see OAC Chapters 123:2-1 through 123:2-9.
6. The Bidder and each person signing on behalf of the Bidder certifies, and in the case of a joint or combined bid, each party thereto certifies as to such party's organization, under penalty of perjury, that to the best of the undersigned's knowledge and belief: (a) the Base Bid, any Unit Prices and any Alternate Bid in the bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition as to any matter relating to such Base Bid, Unit Prices or Alternate bid with any other Bidder; (b) unless otherwise required by law, the Base Bid, any Unit Prices and any Alternate bid in the bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to the bid opening, directly or indirectly, to any other Bidder who would have any interest in the Base Bid,

Unit Prices or Alternate bid; (c) no attempt has been made or will be made by the Bidder to induce any other individual, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition..

7. Bidder will enter into and execute the Contract with the County. If a Contract is awarded on the basis of this bid, and if the Bidder does not execute a Contract for any reason, other than as authorized by law, the Bidder and the Bidder's Surety are liable to the County as provided in Article G of the Instructions to Bidders.
8. Bidder certifies that the upon the award of a Contract, the Contractor will make a good faith effort to ensure that all of the Contractor's employees, while working on the site of the Project, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way
9. Bidder agrees to furnish any information requested by the Architect on behalf of the Owner(s) to evaluate the responsibility of the Bidder.

Each bid shall contain the name of every person interested therein. If the Bidder is a corporation, partnership or sole proprietorship, an officer, partner or principal of the Bidder, as applicable, shall print or type the legal name of the Bidder on the line provided and **sign the Bid Form**. If the Bidder is a joint venture, an officer, partner or principal, as applicable, of each member of the joint venture shall print or type the legal name of the applicable member on the line provided and sign the Bid Form.

BOND

Each bid shall be accompanied with a BID GUARANTY AND CONTRACT BOND for the bid amount including all any and all add alternates. This surety shall be forfeited if the bidder awarded the contract subsequently fails to enter into a contract and furnish the required bond to the Owner within (10) ten days after notice of acceptance of the proposal is made.

In lieu of the Bid Guaranty and Contract Bond, the bidder may submit with the bid a Certified Check or an approved Letter of Credit equal to (10%) ten percent of the total bid including Add Alternates.

All checks shall be returned to the successful bidder upon submission of required bond.

- NOTE "A" Bidder is cautioned to bid on the "Standard" specified and to review the terms and conditions outlined in the Instructions to Bidders as they regard to substitutions to the project specifications.
- NOTE "B" Each person who signs a contract on behalf of a successful bidder shall indicate immediately below his signature the capacity by which he purports to bind the successful bidder. If the successful bidder is an individual owned firm and the signer is other than the Owner, or if the successful bidder is a partnership, the signer other than the partner, if the successful bidder is a corporation and the signer is other than the president, then the successful bidder shall furnish the Owner a power of attorney authorizing the signer to bind the bidder. If the bidder is a corporation, certified copy of the minutes of board of directors meeting wherein the signer was authorized to bind the bidder on such a contract.
- NOTE "C" If the successful bidder is a foreign corporation, it shall furnish a certificate from the secretary of State of Ohio. If the successful bidder is not a resident of Ohio or is a foreign partnership, he shall file with the Secretary of State of Ohio Power of attorney designating the Secretary of State of Ohio as his attorney for the purpose of receiving services of summons in any action on the bond or in any action brought pursuant to any statute in the State of Ohio

BIDDER'S NAME:

Authorized Signature: _____

Print Name: _____

Title: _____

Company Name: _____

Mailing Address: _____

Telephone Number: (_____) _____

Facsimile Number: (_____) _____

Where Incorporated: _____

Federal ID Number: _____

Contact person for
Contract processing: _____

SECTION 00010 - SAMPLE AGREEMENT (FORM AIA A101 –2007, with edits)

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of Contract, including General and Special Conditions and Division 01 Specification Sections apply to work of this Section.

1.2 GENERAL

- A. The contract for the work of this project shall be the AIA A101 – 2007 “Standard Form of Agreement Between Owner And Contractor where the Basis of Payment is a Stipulated Sum”, as modified elsewhere in these specifications, and incorporated herein.

DRAFT AIA® Document A101™ - 2007

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

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

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

[Redacted area for Owner information]

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

[Redacted area for Contractor information]

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

[Redacted area for Project description]

The Architect:
(Name, address and other information)

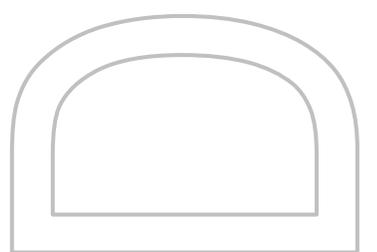
[Redacted area for Architect information]

The Owner and Contractor agree as follows.

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

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

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



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TABLE OF ARTICLES

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

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

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

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

Portion of Work

Substantial Completion Date

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

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

ARTICLE 4 CONTRACT SUM

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

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

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

§ 4.3 Unit prices, if any:

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

Item	Units and Limitations	Price Per Unit
[redacted]	[redacted]	[redacted]

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

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

Item	Price
[redacted]	[redacted]

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 5.2 FINAL PAYMENT

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

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

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

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

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

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows: *(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

Arbitration pursuant to Section 15.4 of AIA Document A201–2007

Litigation in a court of competent jurisdiction

Other *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

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

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

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

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

per annum

§ 8.3 The Owner’s representative:

(Name, address and other information)

§ 8.4 The Contractor’s representative:

(Name, address and other information)

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

§ 8.6 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

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

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

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

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

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

Title of Specifications exhibit:

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

Title of Drawings exhibit:

§ 9.1.6 The Addenda, if any:

Number	Date	Pages

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

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

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



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



ARTICLE 10 INSURANCE AND BONDS

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

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

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

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

OWNER (Signature)

(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)



EXHIBIT A

The following is a list of the Specifications for this project:

Division 01- General Requirements

011000 SUMMARY
011200 MULTIPLE CONTRACT SUMMARY
012300 ALTERNATES
012600 CONTRACT MODIFICATION PROCEDURES
012900 PAYMENT PROCEDURES
013100 PROJECT MANAGEMENT AND COORDINATION
013200 CONSTRUCTION PROGRESS DOCUMENTATION
013300 SUBMITTAL PROCEDURES
014000 QUALITY REQUIREMENTS
014200 REFERENCES
015000 TEMPORARY FACILITIES AND CONTROLS
016000 PRODUCT REQUIREMENTS
017300 EXECUTION REQUIREMENTS
017329 CUTTING AND PATCHING
017419 CONSTRUCTION WASTE MANAGEMENT
017700 CLOSEOUT PROCEDURES
017823 OPERATION AND MAINTENANCE DATA
017839 PROJECT RECORD DOCUMENTS
017900 DEMONSTRATION AND TRAINING

Division 02- Existing Conditions

024119 SELECTIVE DEMOLITION

Division 03- Concrete

033000 CAST-IN-PLACE CONCRETE
035416 HYDRAULIC CEMENT UNDERLAYMENT

Division 05- Metals

055000 METAL FABRICATIONS
055213 PIPE AND TUBE RAILINGS

Division 06- Wood, Plastics, and Composites

061000 ROUGH CARPENTRY
064023 INTERIOR ARCHITECTURAL WOODWORK

Division 07- Thermal and Moisture Protection

072100 THERMAL INSULATION
074213 METAL WALL PANELS
074216 INSULATED CORE METAL WALL PANELS
076200 SHEET METAL FLASHING AND TRIM
079200 JOINT SEALANTS

Division 08- Openings

081113 HOLLOW METAL DOORS AND FRAMES
081416 FLUSH WOOD DOORS
087100 DOOR HARDWARE
087400 ACCESS CONTROL HARDWARE
088000 GLAZING

089000 Louvers And Vents

Division 09- Finishes

092900 GYPSUM BOARD ASSEMBLIES
093000 TILING
095113 ACOUSTICAL PANEL CEILINGS
096500 RESILIENT FLOORING
096513 RESILIENT BASE AND ACCESSORIES
096813 CARPET TILING
099100 PAINTING

Division 10- Specialties

101400 SIGNAGE
101426 POST AND PANEL/PYLON SIGNAGE
102800 TOILET, BATH AND LAUNDRY ACCESSORIES
107326 WALKWAY COVERS

Division 12- Furnishings

124813 ENTRANCE MATS AND FRAMES

Division 22- Plumbing

220501 BASIC PLUMBING REQUIREMENTS
220502 AGREEMENT AND WAIVER FOR THE USE OF COMPUTER AIDED DESIGN FILES
220504 BASIC PLUMBING MATERIALS AND METHODS
220507 PIPING MATERIALS AND METHODS
220509 EXCAVATION, BACKFILL AND SURFACE RESTORATION
220513 ELECTRICAL REQUIREMENTS FOR PLUMBING EQUIPMENT
220519 METERS AND GAUGES FOR PLUMBING PIPING
220523 GENERAL DUTY VALVES FOR PLUMBING PIPING
220529 HANGERS AND SUPPORTS FOR PLUMBING PIPING
220530 BASES AND SUPPORTS FOR PLUMBING EQUIPMENT
220553 IDENTIFICATION OF PLUMBING PIPING AND EQUIPMENT
220719 PLUMBING PIPING INSULATION
221113 FACILITY WATER DISTRIBUTION SYSTEM
221116 INTERIOR DOMESTIC WATER PIPING
221119 INTERIOR DOMESTIC WATER PIPING SPECIALTIES
221316 INTERIOR DRAINAGE AND VENT SYSTEMS
221319 DRAINAGE SYSTEM SPECIALTIES
223300 DOMESTIC WATER HEATERS
224200 PLUMBING FIXTURES

Division 23- Heating, Ventilating, and Air-Conditioning (HVAC)

230501 BASIC HVAC REQUIREMENTS
230502 AGREEMENT AND WAIVER FOR THE USE OF COMPUTER AIDED DESIGN FILES
230504 BASIC HVAC MATERIALS AND METHODS
230505 FIRESTOPPING
230507 PIPING MATERIALS AND METHODS
230513 ELECTRICAL REQUIREMENTS FOR HVAC EQUIPMENT
230530 BASES AND SUPPORTS FOR HVAC EQUIPMENT
230549 VIBRATION CONTROL FOR HVAC
230553 IDENTIFICATION OF HVAC PIPING AND EQUIPMENT
230593 TESTING, ADJUSTING AND BALANCING FOR HVAC
230713 DUCT INSULATION
230719 HVAC PIPING INSULATION
232300 REFRIGERANT PIPING

233113 HVAC DUCTWORK
233300 AIR DUCT ACCESSORIES
233400 HVAC FANS
233700 AIR OUTLETS AND INLETS
235416 HEAT PUMP FAN COIL
236213 AIR COOLED HEAT PUMP
238126 COMPUTER ROOM AIR CONDITIONERS (CEILING AIR COOLED)

Division 26- Electrical

260501 BASIC ELECTRICAL REQUIREMENTS
260502 AGREEMENT AND WAIVER FOR THE USE OF COMPUTER AIDED DESIGN FILES
260504 BASIC ELECTRICAL MATERIALS AND METHODS
260505 FIRESTOPPING
260509 EXCAVATION, BACKFILL AND SURFACE RESTORATION
260519 LOW-VOLTAGE ELECTRICAL POWER CONDUCTORS
260526 GROUNDING AND BONDING FOR ELECTRICAL SYSTEMS
260533 RACEWAYS AND BOXES FOR ELECTRICAL SYSTEMS
260553 IDENTIFICATION FOR ELECTRICAL SYSTEMS
260565 SPECIFIC WIRING APPLICATIONS
260923 LIGHTING CONTROL DEVICES
262416 PANELBOARDS
262417 PANELBOARD WITH SURGE PROTECTIVE DEVICE
262716 ELECTRIC CABINETS AND ENCLOSURES
262726 WIRING DEVICES AND COVERPLATES
262813 FUSES
262816 DISCONNECT SWITCHES
262913 MOTOR CONTROLLERS
264313 SURGE PROTECTIVE DEVICES (SPD'S) FOR LOW-VOLTAGE ELECTRICAL POWER
CURCUITS
265113 INTERIOR LUMINAIRES, LAMPS AND BALLASTS
265200 EXIT AND EMERGENCY LIGHTING
265600 EXTERIOR LIGHTING

Division 31- Earthwork

311000 SITE CLEARING
312000 EARTH MOVING

Division 32- Exterior Improvements

321216 ASPHALT PAVING
323113 CHAIN LINK FENCES AND GATES
329200 TURF AND GRASSES

Division 33- Utilities

334100 STORM DRAINAGE

EXHIBIT B

The following is a list of the Drawings for this project:

G0.00	CONTACT INFO, DRAWING INDEX, CODE DATA, SYMBOLS AND GENERAL NOTES
C1.0	GENERAL NOTES & DETAILS
C2.0	BASEMAP
C3.0	DEMOLITION PLAN
C4.0	LOCATION PLAN
C5.0	UTILITY AND GRADING PLAN
AD1.00	DEMOLITION PLANS
A2.00	CONSTRUCTION PLANS AND PARTITION TYPES
A6.00	DOOR SCHEDULE, DOOR AND WINDOW TYPES AND DETAILS
A8.00	REFLECTED CEILING PLANS
A9.00	FINISH SCHEDULE, SIGN SCHEDULE AND MILLWORK
P0.1	PLUMBING LEGEND, SCHEDULE & DETAILS
P1.0	PLUMBING FLOOR PLAN
M0.1	MECHANICAL LEGEND, SCHEDULE & DETAILS
M1.0	MECHANICAL FLOOR PLAN
M2.0	MECHANICAL ENLARGED PLANS & SCHEMATICS
E0.1	ELECTRICAL LEGEND, SCHEDULE & DETAILS
E0.2	ELECTRICAL SINGLE-LINE DISTRIBUTION & SCHEDULES
E0.3	ELECTRICAL SITE PLAN
E1.0	LIGHTING FLOOR PLAN
E2.0	POWER & SYSTEM FLOOR PLAN
ED0.1	ELECTRICAL DEMOLITION PLAN

EXHIBIT C

Other documents forming part of the Contract Documents are as follows:

1. Legal Notice
2. General Instructions to Bidders
3. Solicitation Provisions/Required Contract Clauses
4. Required Affidavits, Forms & Certifications
 - i. Non-Collusion Affidavit of Prime Bidder
 - ii. Ineligible Contractors Certificate
 - iii. Certification Regarding Lobbying Pursuant to 49 CFR part 20
 - iv. Affidavit in Compliance with Sections 9.24 and 5719.042 of the Ohio Revised Code
 - v. Affidavit in Compliance with Section 3517.13 of the Ohio Revised Code
 - vi. Buy America Certification: Certification Requirement for Procurement of Steel, Iron, Manufactured Products, or Construction Contracts over \$100,000
 - vii. Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization
 - viii. Guaranty Bond for County Purchases, Clermont County Ohio
 - ix. American Recovery & Reinvestment Act Project Employment Information
5. Bid Form

SECTION 00011 – GENERAL CONDITIONS (AIA A201 – 2007)

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of Contract, including Special Conditions and Division 01 Specification Sections apply to work of this Section.

1.2 GENERAL

- A. The General Conditions for the work of this project shall be the AIA A201 – 2007 “General Conditions of the Contract for Construction,” as modified elsewhere in these specifications, and incorporated herein.

DRAFT AIA® Document A201™ - 2007

General Conditions of the Contract for Construction

for the following PROJECT:

THE OWNER:

THE ARCHITECT:

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

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

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

§ 3.4 LABOR AND MATERIALS

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

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

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

§ 3.5 WARRANTY

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

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

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

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

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct,

but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

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

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

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

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

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

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

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

other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the

Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

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

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

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

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

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

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

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

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

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

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

furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the

Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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

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

§ 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

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

§ 9.7 FAILURE OF PAYMENT

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

§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

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

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

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

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

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

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

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

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

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

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's

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

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

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

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

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

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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

§ 11.3.7 WAIVERS OF SUBROGATION

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

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

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

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

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

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

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

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

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

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

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

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

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

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

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

§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

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

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

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

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

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

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

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

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

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

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

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

§ 15.2 INITIAL DECISION

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

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

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

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

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

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

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

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

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

§ 15.3 MEDIATION

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

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

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

§ 15.4 ARBITRATION

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

party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

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

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

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

SUPPLEMENTARY GENERAL CONDITIONS
TO AIA DOCUMENT A-201-2007

The following items will modify or supplement the designated articles of the AIA General Conditions:

ARTICLE 1.2 CORRELATION AND INTENT OF CONTRACT DOCUMENTS

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

- a. The Agreement, AIA A107-2007 including Contract Addendum.
- b. Addenda, with those of later date having precedence over those of earlier date.
- c. Summary of Work, Specification Section 011000.
- d. The Supplementary General Conditions.
- e. The General Conditions of the Contract for Construction AIA A201-2007.
- f. Division 01 of the Specifications.
- g. Drawings and Divisions 02 – 33 of the Specifications.

In the case of conflicts or discrepancies between Drawings and Divisions 02 – 33 of the Specifications or within either Document not clarified by Addendum, the Architect will determine which takes precedence.

ARTICLE 2.2.3 INFORMATION AND SERVICES REQUIRED BY THE OWNER

The Contractor (not Owner) shall locate, protect and repair (if damaged) all Underground and Site Utilities per Specifications.

ARTICLE 3.6 TAXES

Owner, a public authority, is exempt from all federal, state and local sales tax. Retail tax shall not be included in the contract amount.

ARTICLE 3.12.4 In the event of any discrepancy between any submittal and the Contract Documents, the Contract Documents shall control unless the Contractor has specifically noted the discrepancy and the discrepancy is approved in writing by Architect and Owner.

ARTICLE 3.12.11 (added) SHOP DRAWINGS, CUT SHEETS ETC. TO BE SUBMITTED AS FOLLOWS:

- a) General Contract – Sent to Architect for review
 - (2) for Architect's file
 - (3) for Owner's Project Manual/As Builts
 - (-) others for return to and use by the Contractor including 1 for the job trailer

- b) Plumbing HVAC & Electrical Contracts
 - (1) copy for Architect
 - Additional following to Engineer only: see below
 - (1) for Engineer's File
 - (1) for return from Engineer to Architect

- (3) for Owner's Project Manual/As Builts
- (-) others for return to & use by the contractor including 1 for the job trailer

- c) Other Contracts and Special Items shall be submitted as requested by the Architects and/or Owner.

ARTICLE 5.2.5 (added) PROPOSED SUBCONTRACTORS AND MATERIAL SUPPLIERS

After the Bid and prior to the Award of Bids the apparent low bidder (s) shall submit to the Architects, upon the request of the Architects, a complete list of all proposed Subcontractors, Material Suppliers, qualifications of the proposed Subcontractors and Material Suppliers and any other information requested by the Architects. Failure to submit the requested information will result in the bidder's proposal being rejected as non-responsive.

5.5 OWNER PAYMENTS TO SUBCONTRACTORS

- 5.5.1 In the event of any default thereunder by the Contractor, or in the event the Owner or Architect fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount so paid the Subcontractor shall be deducted from the Contractor's contract balance.
- 5.5.2 Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

ARTICLE 7 CHANGES IN THE WORK

1. Prior to taking any action, the Architect shall obtain verbal approval to proceed from the Owner.
2. The Architect shall prepare a bulletin detailing the proposed change and requesting the Contractor's price quotation for the change. Response shall be within 5 days. The bulletin shall contain any necessary drawing revisions and a statement of justification or authorization. This bulletin shall be submitted to all prime contractors, even though it may not appear their work is directly involved.
3. All prime contractors shall submit their quotation to the Architect on their own letterhead. The quotation shall state the amount by which their contract would be altered, whether if be an addition, credit, or not change in the Contract Sum.
4. Contractor shall prepare five (5) copies (each with proper documentation) of the proposed change order on AIA Document G701, change order, and submit same to the Architect for the Architect's approval. The Architect will obtain the approval of the Owner and forward copy to the Contractor.
5. Note that total overhead and profit for Change Orders is limited to fifteen percent (15%) of actual Contractor cost.

ARTICLE 8 TIME

Prior to the Award of Bids and within one week of the Architect's request, the Apparent Low Bidder(s) for each Prime Contract will be required to submit a Critical Path Method Schedule in accordance with the Specification Section 013200 - CONSTRUCTION PROGRESS DOCUMENTATION. In accordance with Clermont County General Instructions to Bidders, said Critical Path Method Schedule may be considered in the determination of the lowest and best bidder. Said Critical Path Method Schedule, as submitted, will be a Supplementary General Condition of the Contract and thus added to Article 8 Time of the General Conditions of the Contract for Construction.

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. The Contractor agrees that whether or not any delay shall be the basis for an extension of time he shall have no claim against the Owner or an increase in the contract price, nor a claim against the Owner for a payment or allowance of any kind for damage, loss or expense resulting from delays except when the cause of the delay is a proximate result of Owner's act or failure to act, or time extensions; nor shall the interruptions to, or suspension of his work to enable other contractors to perform their work because of such claim or more compensation. The only remedy available to the Contractor shall be an extension of time. Delays resulting from a labor dispute will result in a time extension no longer than the dispute period, in addition to a reasonable mobilization period that is unavoidable, and may be less depending on the actual effect the dispute had on the overall progress and operations that were actually curtailed or suspended. Lockouts, over which the Contractor has control, will not be a valid reason for time extension.

8.3.4 NOTICE OF CONDITION CAUSING DELAY

8.3.4.1 Within five (5) working days after the commencement of any condition which is causing or may cause delay in completion, the Contractor must notify the Owner in writing of the effect, if any, of such condition upon the time progress schedule, and must state why and in what respects, if any, the condition is causing or may cause such delay.

8.3.4.2 Failure to strictly comply with this requirement may, in the discretion of the Owner, be deemed sufficient cause to deny any extension of time on account of delay in completion arising out of or resulting from any change, extra work, suspension or other condition.

8.3.5 Acceleration: In the event of an excusable delay which extends scheduled completion dates despite diligent efforts by Contractor, and in lieu of granting an extension of the Contract Time, Owner, at its discretion, may direct Contractor to accelerate its performance to meet the Progress Schedule, in which case Owner shall issue a Change Order to increase the Contract Sum to include the additional cost of the Work, if any, reasonably incurred by Contractor to meet the Progress Schedule. Upon request, Contractor shall provide Owner with the options available for acceleration, including the costs and impact on the Progress Schedule. In presenting costs, Contractor shall credit Owner for those costs which would not be incurred as a result of Owner's willingness to invest extra funds to compress the Progress Schedule. Owner shall only be responsible for the actual premium costs of acceleration specifically authorized in advance for a critical activity in order to offset an excused delay.

ARTICLE 9 PAYMENTS AND COMPLETION

- 9.3.4 The Contractor shall provide the Owner with a Project that is free of liens and attested account claims arising from the Work by having paid all obligations arising from the Project or posting a bond sufficient to cover those obligations.
- 9.6.8 (added) Progress Payments are due in the Architect's on the 20th day of the month. Contractor shall submit four (4) originals of the application of Certification for Payment, Continuation Sheet(s) and Affidavits. Affidavits shall be provided as required to protect the interests of the Owner. The Prime Contractor shall provide affidavit listing names, addresses, trades, amounts owed (including none) for each sub-contractor and/or material supplier on the project. Prime Contractor's Affidavit to be accompanied with 4 originals of a similar sworn statement for each sub-contractor and/or supplier. Illegible and/or incomplete "pay requests" will be returned for resubmittal.

ARTICLE 10 HAZARDOUS MATERIALS

Delete Sections 10.3.3 and 10.3.6

ARTICLE 11 INSURANCE AND BONDS

The insurance required by Subparagraph 11.1.1 shall be written for not less than the following, or greater if required by law as listed below:

1. Workmen's Compensation and Employers Liability as required by the laws of the State of Ohio.
2. The Contractor shall not commence work under the Contract until he has obtained all the insurance required hereunder and has submitted, in quadruplicate and appropriate Declaration of Insurance, as evidence of coverage which has been approved by the Owner and concurred in by the Director. The Contractor shall not allow any Subcontractor to commence work on his subcontract until all similar insurance required by the subcontractor has been obtained and approved. Declaration of Insurance shall be in the format as shown on the attached from and on forms to be furnished by the Director through the Architect. Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

a) CONTRACTOR LIABILITY INSURANCE

- 1) The Contractor shall acquire and maintain during the term of the Contract Bodily Injury and Property Damage Liability Insurance under a standard Comprehensive General/Automobile Liability Policy which shall provide and include coverage on all Contractor's Operations, Contractor's Protective (Sublet) Liability, Contractual Liability, Completed Operations Liability, Owned Automobiles and Non-Owned and Hired Automobiles.
- 2) Coverage for any "if any" basis. Property Damage Liability Insurance shall be provided on any demolition, blasting, excavating, shoring or similar operation on an "if any" basis.

- 3) Bodily Injury Liability limits shall be for an amount of no less than FIVE MILLION (\$5,000,000) DOLLARS for injuries, including wrongful death to any one person and subject to the same limit for each person, in an amount of not less than FIVE MILLION (\$5,000,000) DOLLARS on the account of any one occurrence.
- 4) Property Damage Liability Insurance in an amount of not less than TWO MILLION FIVE HUNDRED THOUSAND (\$2,500,000) DOLLARS per occurrence with General Liability extended to provide "Broad Form Property Damage Liability" and in an amount of not less than FIVE MILLION (\$5,000,000) DOLLARS aggregate for damage on account of all occurrences.
- 5) Any combination of underlying Comprehensive General/Automobile Liability coverage with Umbrella/Excess Liability coverage which provides no less than FIVE MILLION (\$5,000,000) DOLLARS Single Limited Bodily Injury & Property Damage Liability Insurance for the Contractor will also be acceptable.

b) BUILDER'S RISK INSURANCE:

- 1) The General Contractor shall maintain insurance to protect himself and/or the Owner, all other prime contractors, all subcontractors and their subcontractors from loss incurred by fire, lightning, extended coverage hazards, vandalism, theft, explosion and malicious mischief, loss of materials temporarily stored off site, material in transit, flood and loss or damage to equipment, collapse, earthquake, windstorm, false work, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Architects and Contractors' services and expenses required as a result of such insured loss, for the full amount of the initial Contract Sum, plus value of subsequent Contract Modification and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without option of deductibles and such insurance shall cover all labor and materials connected with the work, including materials delivered to the Site but not yet installed on the building, in the full amount of the Contract and such insurance shall cover all labor and materials connected with the Work.

c) INSTALLATION FLOATER INSURANCE:

When a prime Contractor is involved solely in the installation of materials and not in the construction of the building, an Installation Floater is required in lieu of a Builder's Risk Policy with the same general conditions applying as set forth in paragraph b) – (1).

d) The Policies as listed above shall contain the following special provisions:

- 1) "The company agrees that thirty (30) days prior to cancellation or reduction of the insurance afforded by this policy with respect to the Contract involved, written notice will be mailed to the Owner."

- 2) The maintaining of such insurance as outlined herein shall in no way constitute a waiver of legal liability for damage to any adjoining buildings or their contents or the work and property of others on Site beyond the limits of insurance thus maintained. The Contractor shall hold the Owner free and harmless from any injury and damage resulting from the negligent or faulty performance of the Contract by the Contractor or his Subcontractors.
- 3) Each Contractor shall hold the Owner harmless from all payments or patents, either as royalty or otherwise, in the use of materials, methods, appliances, etc., that he may be in any way involved in or connected with any part of his work or the work of his Subcontractors.

Section 11.3 “Property Insurance” is deleted in its entirety and the following shall be substituted:

Section 11.3.1 Owner shall maintain at Owner’s expense in a company lawfully authorized to do business in Ohio as selected by Owner such property insurance as Owner in its sole discretion may determine necessary to protect the interest of the Owner. Such insurance may, but is not required, to protect any interest of the prime contractors or any subcontractors thereunder but such prime contractors and subcontractors shall not be listed or considered as additional insured under such policy.

11.3.2 In the event that any prime contractor or subcontractor determines that such property insurance does not adequately protect the prime or subcontractor, such prime or subcontractor may obtain separate property insurance coverage for such amounts as the Contractor may determine in its best interest. Such insurance shall be wholly at the expense of the Contractor purchasing the insurance and the Owner shall not be listed as a separate insured on such policy.

11.3.7 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 (5) 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 dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

Delete 11.3.8, 11.3.9 and 11.3.10

ARTICLE 15.3 MEDIATION

Article 15.3 entitled “Mediation” is hereby deleted in its entirety and the following shall be submitted:

- 15.3.1 Any claim arising out of or related to the Contract, except claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 9.10.4, 9.10.5 and 15.1.6 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation proceedings as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

- 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually otherwise agree, shall be undertaken on a voluntary basis through the Mediation Office of Clermont County Common Pleas Court and in accordance with the rules of practice then currently in effect. Requests for mediation shall be filed in writing with the other party and with the Presiding Judge of the Clermont County Common Pleas Court, 270 Main Street, Batavia, Ohio 45103. Request for mediation may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable 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.
- 15.3.3 The party requesting mediation shall bear the expense of any mediation and filing fees at the time of filing. The mediation shall be held in the place where the project is located in accordance with the rules of court unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court of competent jurisdiction and the costs of mediation including filing fees and expenses shall be paid in accordance with the final mediation agreement. If no mediation agreement or settlement is reached, the party requesting mediation shall bear such fees. The communication privilege of Section 2710.03 ORC shall apply.

ARTICLE 15.4 ARBITRATION

Article 15.4 entitled "Arbitration" is deleted in its entirety and the following shall be substituted:

- 15.4.1 Any claims arising out of or related to the Contract, which involve monetary claims of **\$50,000 or less in value**, in a single claim or aggregate of claims, except those claims relating to aesthetic affect and except those waived as provided for Subparagraphs 9.10.4, 9.10.5 and 15.1.6 shall, after decision by the Architect or 60 days after submission of the claim to the Architect, be subject to binding arbitration. The parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 4.5 and such attempt shall be considered a condition precedent to proceedings with arbitration.
- 15.4.2 Claims not resolved by mediation and subject to arbitration, shall be decided by arbitration upon a timely filing of a written demand for arbitration served upon the owner and the owners' representative in the case of the demand by the contractor and upon the contractor in the case of demand by the owner.
- 15.4.3 The arbitration demand shall be made within the time limits specified in Subparagraphs 4.4.6 and 4.6.1 as applicable. In no circumstance shall a Claim for arbitration be filed more than 90 days after the event giving rise to the claim occurred nor shall any Claim be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.
- 15.4.4 Arbitration shall proceed according to the following procedures:
- a. The party filing the claim for arbitration shall, not later than 45 days after the date that such Claim is filed; designate a representative to serve on behalf of the claimant on the arbitration panel.
 - b. Upon receipt of timely notice, the other party to the proceeding shall, within 30 days of the receipt of such notice, designate a representative for that party to serve on the arbitration panel.

The two designated representatives shall then within 15 days of the final designation of the parties' representative, select a third representative to serve as Chair of the panel.

- c. In the event the party requesting arbitration fails to timely designate a representative or the representative fails to timely designate the arbitration chair, the arbitration claim shall be deemed withdrawn and the Architect's decision on the Claim shall become final and binding on the parties subject to enforcement in a court of competent jurisdiction.
 - d. In the event that the party upon whom demand is filed fails to designate a representative or their representative fails to designate a candidate for the third position on the panel, the arbitration shall proceed in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. A revised demand for arbitration shall be filed with the Arbitration Association and with the opposing party and any expense arising from the additional filing shall be paid by the party who failed to timely act.
- 15.4.5 The arbitration shall be in the State of Ohio and in the County of Clermont unless an alternative site is agreed upon by the parties. The arbitration shall be governed by Ohio law including, but not limited to, Chapter 2711 ORC; and a court of competent jurisdiction in the State of Ohio shall have exclusive jurisdiction in any court proceedings.
- 15.4.6 The arbitration shall be scheduled at a mutually convenient time between the parties and the panel of arbitrators, but not less than 60 days after the appointment of the third panel member or in accordance with the time limitations of the American Arbitration Association if a revised demand is filed with that organization. Regardless of the method followed, all parties shall have full right of discovery in accordance with the Ohio Rules of Civil Procedure then in effect. The Ohio Rules of Evidence shall not be binding upon the arbitration panel but shall be used by the panel as guidance in conducting in the arbitration hearing. The arbitration panel shall not be entitled to call witnesses on their own behalf unless the panel unanimously decides to call witnesses other than those presented by the parties to the proceeding. In addition, the following procedure will be followed:
- a. Not less than 15 days before the scheduled arbitration hearing, the parties shall exchange written lists of witnesses and documents or other exhibits intended to be introduced at the time of the hearing. In the event that a document, exhibit or witness is not listed on the exchange is called or introduced at the time of the arbitration, the testimony or evidence may only be admitted upon the unanimous consent of the arbitration panel.
 - b. All claims to be presented to the arbitration panel shall be submitted in writing at the time of the demand for arbitration. The demand may be amended and additional claims submitted provided that the claims are timely filed in accordance with the provisions of the general conditions but no additional demand or modifications of the demand shall be made later than 10 days prior to the arbitration hearing as scheduled or as may be continued from time to time. In no event shall any modification of a claim or new claim be heard by the panel after the commencement of the arbitration hearing and the introduction of such additional claim or modified claim shall be considered sufficient grounds to challenge the validity of the arbitration decision in a court of competent jurisdiction. The limitation on modification of demand shall not apply to the withdrawal of any demand at any time in the proceeding. Such withdrawal after the commencement of the proceeding shall be considered "with prejudice" to the filing of the claim at any time in the future.

- 15.4.7 Each party shall be responsible for payment of the fees of the representative designated by the party and for one-half of the third panel member during the pendency of the proceedings. At the time of the final arbitration award, the arbitration panel as part of their award, may allocate such award of fees and costs of arbitration as the panel deems appropriate, including reimbursement for previously paid fees by either party.
- 15.4.8 All parties shall continue with the work contemplated by the Contract and maintain appropriate progress during any mediation or arbitration proceedings in accordance with the Contract and the mediation, arbitration or legal or equitable proceeding filed shall not be deemed grounds for suspension of work or payment under the Contract unless ordered by a court of competent jurisdiction.

The following items will be included in addition to the above modifications of the AIA General Conditions:

ARTICLE 16 DISCRIMINATION AND INTIMIDATION

- a) The Prohibitions against discrimination and intimidation on account of race, creed or color, and the provisions as to forfeitures as to be applied in the event of violation of contract terms regarding same, as contained in Sections 153.59, 153.591 and 153.60 of the Revised Code of Ohio, shall apply to all contracts entered into in connection with the Work. The non-discrimination and equal opportunity provisions of the Governor's Executive Order of January 27, 1972, relative to Equal Employment Opportunity on State Construction Contracts shall also apply as appropriate to all contracts and subcontracts in connection with the Work.
- b) In order to comply with the reporting requirements established by the State Construction EEO Coordinator for State-assisted construction projects, prime contractors and subcontractors must keep appropriate records and submit monthly manpower reports on input Form 29, in accordance with the attached instructions. One (1) original copy to be mailed to the State EEO Construction Coordination, State Office Tower, 35th Floor, 30 East Broad Street, Columbus, Ohio 43215. Phone Number: 614-466-8570. The Monthly Manpower Reporting Input, Form 29 must be in the Office of the State EEO Coordinator Not Later Than the 10th of Each Month.

- c) SEC. 153.59 (2366-1) Discrimination and Intimidation on Account of Race, Creed or Color

Every Contract for or on behalf of the State, or any township, county, or municipal corporation thereof, for the construction, alteration, or repair of any public building or public work in the State shall contain provision by which the contractor agrees:

- 1) That in the hiring of employees for the performance of work under this Contract, or any Subcontract, no Contractor, subcontractor, or any person acting on his behalf shall, by reason of race, creed or color, discriminate against any citizen of the State in the employment of labor or workers who are qualified and available to perform the work to which the employment relates.

- 2) That no Contractor, Subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed or color.

d) SEC 153.591 Hiring Hall Contract with Labor Organization Discrimination Prohibited

Any provision of a hiring hall contract or agreement which obligates a Contractor to hire, if available, only such employees as are referred to him by a labor organization shall be void as against public policy and unenforceable with respect to employment under such public works contract unless at the date of execution or such hiring hall contract or agreement, or within thirty (30) days thereafter, such labor organization has in effect procedures for referring qualified employees for hire without regard to race, color, religion, national origin or ancestry and unless such labor organization includes in its apprentice and journeymen membership, or otherwise has available for job referral without discrimination, qualified employees, both whites and non-whites.

e) SEC. 153.60 (2366-2) Forfeiture:

The Contract referred to in Section 153.59 of the Revised Code shall provide as forfeiture for any breach of the provisions against discrimination:

- 1) That there shall be deducted from the amount payable to the Contractor by the State or by any township, county or municipal corporation thereof, under this Contract (a forfeiture of Twenty Five (\$25) Dollars for each person who is discrimination against or intimidated in violation of this Contract;
- 2) That the Contract shall be cancelled or terminated by the State or township, county, municipal corporation thereof, and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of the Contract.

ARTICLE 17 NONDISCRIMINATION

All Contractors will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to (a) Title VI of the Civil Rights Act of 1964 (PL 88-352). Which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 USC Subsection 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of Rehabilitation Act of 1973, as amended (29 USC Subsection 6101 – 6107) which prohibits discriminations on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (29 USC Subsection 6101 – 6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (PL 93-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol or alcoholism; (g) Subsections 523 and 527 of the Public Health Serviced Act of 1912 (42 USC 290 dd-3 ad 290 ee-3), as amended, relating to the confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 USC Sec 360) et seq.) as amended, relating to the sale, rental, or financing of housing; (i) Subtitle A, Title II of the Americans with Disabilities Act of 1990,

which prohibits discrimination against disabled persons; and (j) Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E and G; and Department of justice regulations on disability discrimination, 28 CFR Part 35 and Part 39 and any other non discrimination provisions in the specific statute(s) under which application for Federal assistance is being made.

ARTICLE 18 PAYROLL SUBMITTALS AND WAGE DETERMINATION

1. Per Section 4115.071 of the Revised Code of Ohio, the following wage information shall be furnished to the Owner's appointment prevailing wage coordinator.
 - a) Every contractor or subcontractor who is subject to laws pertaining to the wages and hours on Public Work Projects shall, at the beginning of performance under the Contract submit the date during the life of his contract when payments of wages to employees are to be made.
 - b) Each contractor or subcontractor within three (3) weeks after each pay date, shall furnish a certified copy of this complete payroll for each date; exhibiting for each employee paid wages, the employee's name, current address, social security number, number of hours worked each day during the pay period, the total for each week, his hourly rate of pay, his job classification, fringe payments and deduction from his wages.
 - c) The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors.
 - d) The payroll submitted shall be executed by the prime contractor or subcontractor or a duly appointed agent thereof and shall recite that the payroll is correct and the wage rates shown are not less than those required by the Contract.
 - 1) Sec. 4115.99 (A) Whoever violates Section 4115.08 or 5115.09 of the Revised Code shall be fined not less than Twenty-Five (\$25.00) Dollars, no more than Five Hundred (\$500) Dollars. (B) Whoever violates Section 4115.071, 4115.10 or 4115.11 of the Revised Code shall be fined Five Hundred (\$500) Dollars for the first offense' for each subsequent offense such person shall be fined One Thousand (\$1,000) Dollars.
2. On the 20th day of the month the Prime Contractor shall submit Prevailing Wage Reports for the Prime Contractor and his/her subcontractors. All prime and Sub-Contractors must submit prevailing wage reports for each week even if reported "did not work". All prevailing wage reports shall be numbered from the first week ending after the Notice to Proceed.

Submit Prevailing Wage Report to:
Prevailing Wage Coordinator
Clermont County OMB
101 East Main Street
Batavia, OH 45103

3. WAGE DETERMINATION

- a) The attached pages are Prevailing Rates of Wages as ascertained by the Department of Industrial Relations for the Project, as provided in Section 4115.03 through 4115.14 of the Ohio Revised Code.

SECTION 00013 - WAGE DETERMINATION SCHEDULE

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

Drawings and general provisions of Contract, including General and Special Conditions and Division 01 Specification Sections apply to work of this Section.

1.2 GENERAL

The work of this project shall be bid and performed in accordance with the prevailing wage rates in effect at the time of execution. Contractors shall be responsible for complying with prevailing wage requirements for all trades regardless of the prevailing wage content in this project manual.

Contractor Prequalification Statement										
1. Name of firm:										
2. Address of firm:										
3. Is your firm a:	<input type="checkbox"/> Corporation		<input type="checkbox"/> S Corporation		<input type="checkbox"/> LLC		<input type="checkbox"/> Partnership		<input type="checkbox"/> Individual	
4. How many years has your firm been in business under the present name?										Years.
5. If less than five years, list the names and dates of predecessor firms since January 1, 1996.										
6. List all principal owners, partners, or officer of your firm										
NAME				TITLE						
7. Will the project be managed from the above address?					<input type="checkbox"/> Yes		<input type="checkbox"/> No			
8. Number and percentage of present field work force living within the "project's service area":										
Number of Field Employees			Total number of Employees							
Number of Office Employees			Average tenure of Field Supervisors							
Number of Field Supervisors			Average tenure of Office Employees							
Labor Force (Check which applies) Union _____ Merit Shop _____										
8a. Identify all local or national Trade Unions of your workforce										
Trade					Local					
9. Has your firm or its predecessor ever failed to complete any contract awarded to it in the last five years?					<input type="checkbox"/> Yes		<input type="checkbox"/> No			
If Yes, state when, where and why:										
10. Is your firm capable of providing a Bid Bond and a 100% Performance Bond for this project?					<input type="checkbox"/> Yes		<input type="checkbox"/> No			
11. What is your firm's total bonding capacity?										

What is the value of work currently bonded?			
What is the value of potential projects to be bonded in 2009?			
What is your single project bond limit?			
What is your composite rate for this contract value?			
12. Provide the name, address and telephone number of bonding company and agent.			
Name:			
Address:			
City:	State: Zip		
Phone:	Fax:		
Agent's Name:			
13. Is your firm currently involved in any litigation or arbitration with another contractor/General Contractor/CM?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
With an Owner?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
List those your have been in litigation with within the last three (3) years:			
13a. Complete the following from your Insurance Carrier.			
Item	Carrier	Expiration Date	Limit
Gen Liab. Agg. Amount			
Umbrella Amount			
Property			
Professional			
Worker's Comp			

14. Provide a list of similar projects your firm has worked on in the past five (5) years. List the approximate contract amount and the items of work for each.					
YEAR	PROJECT NAME	CONTRACT AMOUNT	ITEM OF WORK PERFORMED	GC/CM	ARCHITECT
15. What is your approximate total dollar volume of work put in place in each of the past five (5) years?					
2003	2004	2005	2006	2007	
16. Please provide your firms Experience Modifier Rate for the past two (2) years.			2006	2007	
17. Please provide a list of OSHA fines assessed over the last five years:					
DATE	PROJECT	VIOLATION		FINE VALUE	
18. Does your firm have the following programs and policies in effect at this time?					
Safety		Yes		No	
Quality Control		Yes		No	
Drug/Alcohol Testing		Yes		No	
18a. Provide the following from your OSHA 200 Log for the past two years.					
Description	2004		2005		
Number of Fatalities					
Number of Lost Workday Cases					
Number of Injuries & Illnesses w/o lost Workdays					
Total of field & shop hours worked					

18b. Respond to the following questions on your safety program.	
Do you have a certified full-time Safety Officer?	
Do you have a documented safety program? If so, please furnish.	
How often are your tool box safety meetings held and who is required to attend?	

19. Current value of work under contract		\$				
JOB NAME	COMPLETION DATE	CONTRACT VALUE	% COMPLETE	OWNER	GC/CM	ARCHITECT

20. Trade References (General Contractors, Architects, Engineers, Owners, Vendors, Financial): Provide a minimum of five (5) references.						
	• Name					
	• Address					
	• City		• ST		• Zip	
	• Phone		• Contact			
	• Name					
	• Address					
	• City		• ST		• Zip	
	• Phone		• Contact			
	• Name					
	• Address					
	• City		• ST		• Zip	
	• Phone		• Contact			
	• Name					
	• Address					
	• City		• ST		• Zip	
	• Phone		• Contact			

	• Name				
	• Addresses				
	• City		• ST		• Zip
	• Phone		• Contact		

21. Indicate all specific areas of work which your firm self-performs:

22. Indicate all specific areas of work which your firm will contract out:

23. Please attach the following:

- Resumes of your proposed Project Manager and Project Superintendent.
- AUDITED FINANCIAL STATEMENTS (LAST TWO YEARS), PLUS CURRENT INTERIM STATEMENT.
- LETTER FROM SURETY COMPANY PROVIDING THE FOLLOWING INFORMATION:
 - AGGREGATE BONDING LIMITS
 - SINGLE PROJECT LIMIT
 - CURRENT AVAILABLE CAPACITY

The undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

Submitted by:	
Title:	
Date:	