



Nelson County Board of Education
288 Wildcat Lane, Bardstown, KY 40004
Telephone: (502)-349-7000

**Nelson County Schools
Energy Upgrades**

Project Contract

April 22, 2014

CMTA, Inc.
10411 Meeting Street
Prospect, KY 40059



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Nelson County Schools



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April 22, 2014

Nelson County Schools
288 Wildcat Lane
Bardstown, KY 40004

Attn: Mr. Anthony Orr

Re: Guaranteed Energy Savings Contract

Mr. Orr,

CMTA is pleased to provide you with this proposal and contract for a guaranteed energy savings contract for Nelson County Schools. The project highlights include:

1. New geothermal HVAC system at Cox's Creek Elementary School.
2. HVAC and plumbing system improvements at Nelson County High School.
3. Hydronic pump efficiency measures at Nelson County High School, Old Kentucky Home Middle School, Boston School, Bloomfield Elementary School, and the Central Office.
4. Lighting fixture and control upgrades across the District.
5. Programming changes to existing controls systems to optimize energy efficiency.
6. DDC controls upgrade at the Central Office and Horizons Academy.
7. Water conservation measures.
8. Building envelope improvements.
9. Electric and gas rate modifications to reduce utility expenses.

The total cost of these upgrades is \$3,319,010. This includes direct purchase of materials that will be deducted from this total and purchased directly by Nelson County Schools to save on the 6% state sales tax.

These upgrades are fully funded by utility and operational savings that are generated from the project and provide a positive cash flow over the term of the project. CMTA guarantees the savings over the 20-year term and should the project not achieve the savings identified, CMTA will reimburse Nelson County Schools the shortfall on an annual basis. The first year measurement and verification program is included in the contract price and additional years will be invoiced separately.

CMTA Energy Solutions is excited about this project and appreciates the opportunity to work with Nelson County Schools. This project will improve the indoor learning environments at these facilities while reducing the energy and operational costs. We are very excited about getting started and look forward to working with the administration, board and staff. Please let me know if you have any questions.

Sincerely,

Adam Pierce, PE
CMTA Energy Solutions

AIA[®] Document A141[™] – 2004

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the Twenty-second day of April in the year Two Thousand Fourteen

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

BETWEEN the Owner:

(Name, legal status, address and other information)

Nelson County Board of Education, Nelson County Board of Education
288 Wildcat Lane
Bardstown, KY 40004
Telephone Number: (502) 349-7000

and the Design-Builder:

(Name, legal status, address and other information)

CMTA Energy Solutions, CMTA, Inc.
10411 Meeting Street
Prospect, KY 40059
Telephone Number: (502) 326-3085

for the following Project:

(Name, location and detailed description)

Nelson County Schools Energy Upgrades
Nelson County, KY

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build 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 Owner.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build 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 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 Work, the Owner requires time to file mortgages, documents related to mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

(Insert Owner's time requirements.)

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.

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

§ 3.3 The Design-Builder shall achieve Substantial Completion of the 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. Unless stated elsewhere in the Design-Build Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

| The Contractor shall achieve Substantial Completion of the entire Work not later than August 01, 2014.

Portion of Work

Substantial Completion Date

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

- ☒ [X] Stipulated Sum in accordance with Section 4.2 below;
- ☐ [] Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;
- ☐ [] Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

§ 4.2 STIPULATED SUM

§ 4.2.1 The Stipulated Sum shall be Three Million Three Hundred Nineteen Thousand Ten Dollars and Zero Cents (\$ 3,319,010.00), subject to additions and deductions as provided in the Design-Build Documents.

§ 4.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.2.3 Unit prices, if any, are as follows:

Description	Units	Price (\$0.00)
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§ 4.2.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both)

Allowance	Amount (\$0.00)	Included Items
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§ 4.2.5 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

§ 4.3 NOT USED

(Paragraphs deleted)

§ 4.4 NOT USED

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

§ 4.5.2 Where the Contract Sum is the Cost of the Work, with or without a Guaranteed Maximum Price, and no specific provision is made in Sections 4.3.2 or 4.4.2 for adjustment of the Design-Builder's Fee in the case of Changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment will cause substantial inequity to the Owner or Design-Builder, the Design-Builder's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Contract Sum shall be adjusted accordingly.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build 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 not later than the First day of month, the Owner shall make payment to the Design-Builder not later than the Twenty-fifth day of the same month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Owner receives the Application for Payment.

§ 5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

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

§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM

§ 5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.2.2 Subject to other provisions of the Design-Build 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 Ten percent (10.00 %) on the Work, other than services provided by design professionals and other consultants retained directly by the Design-Builder. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;

- .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 Zero percent (0.00 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Owner has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.2.3 The progress payment amount determined in accordance with Section 5.2.2 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 Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section A.9.8.6 of Exhibit A, Terms and Conditions 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 Design-Builder, any additional amounts payable in accordance with Section A.9.10.3 of Exhibit A, Terms and Conditions.

§ 5.2.4 Reduction or limitation of retainage, if any, under Section 5.2.2 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 5.2.2.1 and 5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert here provisions for such reduction or limitation.)

(Paragraphs deleted)

§ 5.3 NOT USED

§ 5.4 NOT USED

(Paragraphs deleted)

§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 The parties appoint the following individual to serve as a Neutral pursuant to Section A.4.2 of Exhibit A, Terms and Conditions:

(Insert the name, address and other information of the individual to serve as a Neutral. If the parties do not select a Neutral, then the provisions of Section A.4.2.2 of Exhibit A, Terms and Conditions, shall apply.)

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)

(Check one.)

Init.

- [X] Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions
- [] Litigation in a court of competent jurisdiction
- [] Other (*Specify*)

§ 6.3 ARBITRATION

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

(*Insert name, address, license number, relationship to Design-Builder and other information.*)

Name and Address	License Number	Relationship to Design-Builder	Other Information
Studio Kremer 10825 Bluegrass Pkwy Louisville, KY 40299		Architect	

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:
(*Insert name, address, license number, if applicable, and responsibilities to Owner and other information.*)

Name and Address	License Number	Responsibilities to Owner	Other Information
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§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:
(*Insert name, address, license number, if applicable, responsibilities to Owner and other information.*)

Name and Address	License Number	Responsibilities to Owner	Other Information
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§ 7.4 The Owner's Designated Representative is:
(*Insert name, address and other information.*)

Anthony Orr
288 Wildcat Lane
Bardstown, KY 40004
Telephone Number: (502) 349-7000

§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.5 The Design-Builder's Designated Representative is:
(*Insert name, address and other information.*)

Adam Pierce
10411 Meeting Street
Prospect, KY 40059
Telephone Number: (502) 326-3085

§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

§ 7.7.2 Payments due and unpaid under the Design-Build 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.)

percent (%)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Document	Title	Pages
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§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:
(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

Title	Date
-------	------

§ 8.1.4 The Design-Builder's Proposal, dated April 22, 2014 , consists of the following:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Init.

Executive Summary

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.6 The Addenda, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Number	Date	Pages
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§ 8.1.7 Exhibit A, Terms and Conditions.
(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

§ 8.1.8 Exhibit B, NOT USED

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.
(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Exhibit D - Prevailing Wage Rates
Exhibit E - Anticipated Progress and Payment Schedule
Exhibit F - Sample AIA Application for Payment
Exhibit G - Schedule of Values
Exhibit H - Project Narrative / Scope of Work
Exhibit I - Project Plans and Specifications List
Exhibit J - Not Used
Exhibit K - Energy Savings Guarantee
Exhibit L - Utility Baseline Data
Exhibit M - Savings Calculations
Exhibit N - Project Financing
Exhibit O - Non-Collusion Affidavit
Exhibit P - Support Services Agreement
Exhibit Q - Warranty and Title

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

OWNER (Signature)

Anthony Orr, Superintendent
(Printed name and title)

DESIGN-BUILDER (Signature)

Adam Pierce, Energy Solutions Leader
(Printed name and title)

AIA Document A141™ – 2004 Exhibit A

Terms and Conditions

for the following PROJECT:

(Name and location or address)

Nelson County Schools Energy Upgrades
Nelson County, KY

THE OWNER:

(Name, legal status and address)

Nelson County Board of Education, Nelson County Board of Education
288 Wildcat Lane
Bardstown, KY 40004

THE DESIGN-BUILDER:

(Name, legal status and address)

CMTA Energy Solutions, CMTA, Inc.
10411 Meeting Street
Prospect, KY 40059

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Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.2 PROJECT CRITERIA

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.3 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

§ A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.6 THE WORK

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

§ A.1.1.7 THE PROJECT

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

§ A.1.1.8 NEUTRAL

The Neutral is the individual appointed by the parties to decide Claims and disputes pursuant to Section A.4.2.1.

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

§ A.1.2.2 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

§ A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

§ A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Design-Build 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.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder 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 Design-Build Documents.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder are Instruments of Service. The Design-Builder, Design-Builder's Architect and other providers of professional services individually shall retain all common law, statutory and other reserved rights, including copyright in those Instruments of Services furnished by them. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project.

§ A.1.6.2 Upon execution of the Design-Build Contract, the Design-Builder grants to the Owner a non-exclusive license to reproduce and use the Instruments of Service solely in connection with the Project, including the Project's further development by the Owner and others retained by the Owner for such purposes, provided that the Owner shall comply with all obligations, including prompt payment of sums when due, under the Design-Build Documents. Subject to the Owner's compliance with such obligations, such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Design-Builder shall obtain similar non-exclusive licenses from its design professionals, including the Architect. The Owner shall not otherwise assign or transfer any license herein to another party without prior written agreement of the Design-Builder. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner's sole risk and expense without liability to the Design-Builder and its design professionals. Except as provided in Section A.1.6.4, termination of this Agreement prior to completion of the Design-Builder's services to be performed under this Agreement shall terminate this license.

§ A.1.6.3 Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Design-Builder shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Design-Build Documents.

§ A.1.6.4 If this Agreement is terminated for any reason other than the default of the Owner, each of the Design-Builder's design professionals, including the Architect, shall be contractually required to convey to the Owner a non-exclusive license to use that design professional's Instruments of Service for the completion, use and maintenance of the Project, conditioned upon the Owner's written notice to that design professional of the Owner's assumption of the Design-Builder's contractual duties and obligations to that design professional and payment to that design professional of all amounts due to that design professional and its consultants. If the Owner does not assume the remaining duties and obligations of the Design-Builder to that design professional under this Agreement, then the Owner shall indemnify and hold harmless that design professional from all claims and any expense, including legal fees, which that design professional shall thereafter incur by reason of the Owner's use of such Instruments of Service. The Design-Builder shall incorporate the requirements of this Section A.1.6.4 in all agreements with its design professionals.

§ A.1.6.5 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

ARTICLE A.2 OWNER

§ A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the Owner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder 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.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

§ A.2.2.2 The Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Owner under Section A.2.2, shall be furnished at the Owner's expense, and the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.11 The Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

§ A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. 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 Design-Builder as required by the Design-Build Documents.

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

- .1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.
- .2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.
- .3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.
- .4 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.
- .5 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check

the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible 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 Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner 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 Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing.

§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

§ A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder 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 Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-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 after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, 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 Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE A.3 DESIGN-BUILDER

§ A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their

professions. The Owner understands and agrees that the services performed by the Design-Builder's Architect and the Design-Builder's other design professionals and consultants are undertaken and performed in the sole interest of and for the exclusive benefit of the Design-Builder.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

§ A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner 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 Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design 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 professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder 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 Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, 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.

§ **A.3.4.2** When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ **A.3.4.3** The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ **A.3.5 WARRANTY**

§ **A.3.5.1** The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ **A.3.6 TAXES**

§ **A.3.6.1** The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§ **A.3.7 PERMITS, FEES AND NOTICES**

§ **A.3.7.1** The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ **A.3.7.2** The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ **A.3.7.3** It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ **A.3.7.4** If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ **A.3.8 ALLOWANCES**

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

§ **A.3.8.2** Unless otherwise provided in the Design-Build Documents:

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Design-Builder'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 A.3.8.2.1 and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

§ **A.3.8.3** Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner's information the Design-Builder's schedule for the Work. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build 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 Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents 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.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.12 USE OF SITE

§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ **A.3.13.2** The Design-Builder 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 Design-Builder 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 Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ **A.3.14 CLEANING UP**

§ **A.3.14.1** The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ **A.3.14.2** If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

§ **A.3.15 ACCESS TO WORK**

§ **A.3.15.1** The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ **A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS**

§ **A.3.16.1** The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner 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 or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ **A.3.17 INDEMNIFICATION**

§ **A.3.17.1** To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner'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 Design-Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

§ **A.3.17.2** In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE A.4 DISPUTE RESOLUTION

§ **A.4.1 CLAIMS AND DISPUTES**

§ **A.4.1.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Time Limits on Claims. 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. Claims must be initiated by written notice to the other party.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall proceed pursuant to Section A.4.2.

§ A.4.1.5 Claims for Additional Cost. If the Design-Builder wishes to make 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 A.10.6.

§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 Claims for Additional Time

§ A.4.1.7.1 If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ A.4.1.7.2 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.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Contract 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.

§ A.4.1.9 If unit prices are stated in the Design-Build 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 Design-Builder, the applicable unit prices shall be equitably adjusted.

§ A.4.1.10 Claims for Consequential Damages. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build 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 Design-Builder 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 A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 Decision by Neutral. If the parties have identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents, then Claims, excluding those arising under Sections A.10.3 through A.10.5, shall be referred initially to the Neutral for decision. An initial decision by the Neutral shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Neutral with no decision having been rendered by the Neutral. Unless the Neutral and all affected parties agree, the Neutral will not decide disputes between the Design-Builder and persons or entities other than the Owner.

§ A.4.2.2 Decision by Owner. If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents then, except for those claims arising under Sections A.10.3 and A.10.5, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ A.4.2.3 The initial decision pursuant to Sections A.4.2.1 and A.4.2.2 shall be in writing, shall state the reasons therefore and shall notify the parties 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 first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.

§ A.4.2.4 In the event of a Claim against the Design-Builder, 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 Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ A.4.2.5 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 prior to initial resolution of the Claim.

§ A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such

event, mediation shall proceed in advance thereof or of 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.

§ **A.4.3.3** 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.

§ **A.4.4 ARBITRATION**

§ **A.4.4.1** Claims, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, for which initial decisions have not become final and binding, and which have not been resolved by mediation but which are subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement or elsewhere in the Design-Build Documents, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association.

§ **A.4.4.2** A demand for arbitration may 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 institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A.13.6.

§ **A.4.4.3** An arbitration pursuant to this Section A.4.4 may be joined with an arbitration involving common issues of law or fact between the Owner or Design-Builder and any person or entity with whom the Owner or Design-Builder has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Design-Build Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Design-Build Contract or not a party to an agreement with the Owner or Design-Builder, except by written consent containing a specific reference to the Design-Build Contract signed by the Owner and Design-Builder and any other person or entities sought to be joined. 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 or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ **A.4.4.4 Claims and Timely Assertion of Claims.** 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.

§ **A.4.4.5 Judgment on Final Award.** 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.

ARTICLE A.5 AWARD OF CONTRACTS

§ **A.5.1** Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

§ **A.5.2** The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ **A.5.3** If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity 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 person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.

§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

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

§ A.5.5.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ A.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. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

§ A.6.1.2 The term "separate contractor" shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

§ A.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 Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder 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 Design-Builder, separate contractors and the Owner until subsequently revised.

§ A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder 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 Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder 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 Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, 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 Owner shall allocate the cost among those responsible.

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 a 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.

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

§ A.7.3.1 A Construction Change Directive is a written order signed by the Owner 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 Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

§ A.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 Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;
- .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 A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder'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.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder 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.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner 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, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

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

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. 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.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have 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 Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME

§ A.8.1 DEFINITIONS

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

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner 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 Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

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

ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Before the first Application for Payment, where the Contract Sum is based upon a Stipulated Sum or the Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents:

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ A.9.3.2 Unless otherwise provided in the Design-Build 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 Design-Builder 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.

§ A.9.3.3 The Design-Builder warrants that title to all Work other than Instruments of Service covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .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 Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Contractors or for design services 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 persistent failure to carry out the Work in accordance with the Design-Build Documents.

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

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the

Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 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 Design-Build Documents.

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

§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven additional days' written notice to the Owner, 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 Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ A.9.8 SUBSTANTIAL COMPLETION

§ A.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 Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion 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 Design-Build Documents.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.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 Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder 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 completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder 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 Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.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 Design-Build Documents.

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (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 Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build 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 Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder 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 Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, 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 Design-Build 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 Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.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 Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or

- .3 terms of special warranties required by the Design-Build Documents.

§ A.9.10.5 Acceptance of final payment by the Design-Builder, a Contractor 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 A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder 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 or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or 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.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, 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.

§ A.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 Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a 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 Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 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 Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner.

§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder 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 Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has 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 Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the 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 exists on site as of the date of the Agreement, is not disclosed in the Design-Build Documents and presents the risk of bodily injury or death as described in Section A.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) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder unless such materials or substances were required by the Design-Build Documents.

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder 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 Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor 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 which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder'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 Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in the Design-Build 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 date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ A.11.2.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 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. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

§ A.11.3 OWNER'S LIABILITY INSURANCE

§ A.11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ A.11.4 PROPERTY INSURANCE

§ A.11.4.1 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 the value of subsequent Design-Build 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 Design-Build 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 A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 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 Design-Builder's services and expenses required as a result of such insured loss.

§ A.11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Design-Build Contract and with all of the coverages in the amount described above, the Owner shall so inform the Design-Builder in writing prior to commencement of the Work. The Design-Builder may then effect insurance that will protect the interests of the Design-Builder, Contractors and Subcontractors in the Work, and, by appropriate Change Order, the cost thereof shall be charged to the Owner. If the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above without so notifying the Design-Builder in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ A.11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ A.11.4.1.4 This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

§ **A.11.4.1.5** Partial occupancy or use in accordance with Section A.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 Design-Builder 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.

§ **A.11.4.2 Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance required by the Design-Build 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, Design-Builder, Contractors and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ **A.11.4.3 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 Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

§ **A.11.4.4** If the Design-Builder 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 Design-Builder by appropriate Change Order.

§ **A.11.4.5** 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 A.11.4.7 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.

§ **A.11.4.6** Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section A.11.4. 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 Design-Builder.

§ **A.11.4.7 Waivers of Subrogation.** The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and employees, each of the other, and any of their contractors, 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 A.11.4 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 Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, 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, even though the person or entity 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.

§ **A.11.4.8** A loss insured under 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 A.11.4.10. The Design-Builder shall pay Contractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.

§ **A.11.4.9** 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. If after such loss no other special agreement is made and unless the Owner terminates the Design-Build Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article A.7.

§ A.11.4.10 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.; The Owner as fiduciary shall, in the case of a decision or award, make settlement with insurers in accordance with directions of a decision or award. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build 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 Design-Build Documents, correction shall be at the Design-Builder'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.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build 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, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder 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 Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.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 performance of the Work.

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

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

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

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

§ A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build 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 Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

§ A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build 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.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder 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 Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

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

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

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

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

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 As between the Owner and Design-Builder:

- .1 Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 Between Substantial Completion and Final Application for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and
- .3 After Final Application for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

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

- .1** issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2** an act of government, such as a declaration of national emergency which requires all Work to be stopped;

- .3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or
- .4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

§ A.14.1.2 The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.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.

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

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

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Design-Build Contract if the Design-Builder:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;
- .3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Design-Build Documents.

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 accept assignment of contracts pursuant to Section A.5.5.1; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ A.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 A.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 Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder 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 contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder 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.



AIA Document A141™ – 2004 Exhibit C

Insurance and Bonds

for the following PROJECT:

(Name and location or address)

Nelson County Schools Energy Upgrades
Nelson County, KY

THE OWNER:

(Name, legal status and address)

Nelson County Board of Education, Nelson County Board of Education
288 Wildcat Lane
Bardstown, KY 40004

THE DESIGN-BUILDER:

(Name, legal status and address)

CMTA Energy Solutions, CMTA, Inc.
10411 Meeting Street
Prospect, KY 40059

ADDITIONS AND DELETIONS:

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

ARTICLE C.1

The Owner and Design-Builder shall provide policies of liability insurance as required by the Design-Build Documents, or as follows:

(Specify changes, if any, to the requirements of the Design-Build Documents, and for each type of insurance identify applicable limits and deductible amounts.)

1. Commercial and General Liability in an amount not less than \$1,000,000 each occurrence.
2. Comprehensive Automotive Liability in an amount not less than \$1,000,000 each occurrence.
3. Workman's Compensation insurance meeting statutory requirements and Employee Liability Insurance not less than \$1,000,000 each occurrence.
4. Excess General Liability not less than \$3,000,000.

ARTICLE C.2

The Design-Builder shall provide surety bonds as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Performance and Payment Bond	\$3,319,010

In no event and in no manner shall coverage under the Performance and Payment Bond extend to the energy savings guarantee as set forth in Exhibit K – Energy Savings Guarantee.

§ C.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**Exhibit D – Prevailing Wage Rate Determination
Guaranteed Energy Savings Contract
Nelson County Schools**



Prevailing Wage Rate Determination:

The following wage rates are applicable for this project and have been coordinated with the Kentucky Department of Labor.



Steven L. Beshear
Governor

KENTUCKY LABOR CABINET
DEPARTMENT OF WORKPLACE STANDARDS
DIVISION OF EMPLOYMENT STANDARDS,
APPRENTICESHIP & MEDIATION
1047 US Hwy 127 S - Suite 4
Frankfort, Kentucky 40601
Phone: (502) 564-3534
Fax (502) 696-1897
www.labor.ky.gov

Larry Roberts
Secretary

Anthony Russell
Commissioner

February 7, 2014

Adam Pierce
CMTA Inc.
10411 Meeting St.
Prospect KY 40059

Re: Nelson County School District, Nelson Co. Schools Energy Upgrade

Advertising Date as Shown on Notification: February 15, 2014

Dear Adam Pierce:

This office is in receipt of your written notification on the above project as required by KRS 337.510 (1).

I am enclosing a copy of the current prevailing wage determination number CR 4-016, dated November 26, 2013 for NELSON County. This schedule of wages shall be attached to and made a part of the specifications for the work, printed on the bidding blanks, and made a part of the contract for the construction of the public works between the public authority and the successful bidder or bidders.

The determination number assigned to this project is based upon the advertising date contained in your notification. There may be modifications to this wage determination prior to the advertising date indicated. In addition, if the contract is not awarded within 90 days of this advertising date or if the advertising date is modified, a different set of prevailing rates of wages may be applicable. It will be the responsibility of the public authority to contact this office and verify the correct schedule of the prevailing rates of wages for use on the project. Your project number is as follows: 090-B-00119-13-4, Building

Sincerely,

Anthony Russell
Commissioner



KENTUCKY LABOR CABINET
PREVAILING WAGE DETERMINATION
CURRENT REVISION
LOCALITY NO. 16

MARION, NELSON, TAYLOR & WASHINGTON COUNTIES

Determination No. CR 4-016 2013

Date of Determination: November 26, 2013

Project No. 090-B-00119-13-4 Type: <u> x </u> Bldg <u> </u> HH
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This schedule of the prevailing rate of wages for Marion, Nelson, Taylor, & Washington Counties has been determined in accordance with the provisions of KRS 337.505 to 337.550. This determination shall be referred to as Prevailing Wage Determination No. CR 4-016 2013.

Apprentices shall be permitted to work as such subject to Administrative Regulations 803 KAR 1:010. Copies of these regulations will be furnished upon request to any interested person.

Overtime is to be computed at not less than one and one-half (1 1 / 2) times the indicated BASE RATE for all hours worked in excess of eight (8) hours per day, and / or in excess of forty (40) hours per week. However, KRS 337.540 permits an employee and employer to agree, in writing, that the employee will be compensated at a straight time base rate for hours worked in excess of eight (8) hours in any one calendar day, but not more than ten (10) hours worked in any one calendar day, if such written agreement is prior to the over eight (8) hours in a calendar day actually being worked, or where provided for in a collective bargaining agreement. The fringe benefit rate is to be paid for each hour worked at a straight time rate for all hours worked.

Fringe benefit amounts are applicable for all hours worked except when otherwise noted. Welders will receive rate for craft in which welding is incidental.

NOTE: The type of construction shall be determined by applying the following definitions:

BUILDING CONSTRUCTION

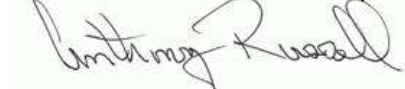
Building construction is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level, as well as incidental grading, utilities and paving.

HIGHWAY CONSTRUCTION

Highway construction includes the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction. It includes all incidental construction in conjunction with the highway construction project.

HEAVY CONSTRUCTION

Heavy projects are those projects that are not properly classified as either "building" or "highway". For example, dredging projects, water and sewer line projects, dams, flood control projects, sewage treatment plants and facilities, and water treatment plants and facilities are considered heavy.



Anthony Russell, Commissioner
Department of Workplace Standards
Kentucky Department of Labor

Determination No. CR 4-016 2013
November 26, 2013

ASBESTOS / INSULATION WORKERS:

MARION, NELSON, TAYLOR & WASHINGTON COUNTIES:
(Includes duct (hot / cold), pipe insulator, pipe wrapping):

BUILDING	BASE RATE	\$24.92
	FRINGE BENEFITS	11.85

Hazardous Material Handlers: (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging & disposing of all insulation materials, whether they contain asbestos or not, from mechanical systems):

BUILDING	BASE RATE	\$19.35
	FRINGE BENEFITS	10.35

BOILERMAKERS:

MARION, NELSON & WASHINGTON COUNTIES:

BUILDING	BASE RATE	\$35.79
	FRINGE BENEFITS	16.71

BOILERMAKERS:

TAYLOR COUNTY:

BUILDING	BASE RATE	\$35.79
	FRINGE BENEFITS	16.71

HEAVY & HIGHWAY	BASE RATE	\$24.65
	FRINGE BENEFITS	12.94

BRICKLAYERS:

NELSON COUNTY:

Bricklayers:	BUILDING	BASE RATE	\$24.82
		FRINGE BENEFITS	10.71

Brick Refractory, Brick Placement Worker:

BUILDING	BASE RATE	\$25.32
	FRINGE BENEFITS	10.71

Tile Setters:

BUILDING	BASE RATE	\$22.64
	FRINGE BENEFITS	6.10

Tile Finishers:

BUILDING	BASE RATE	\$15.42
	FRINGE BENEFITS	5.42

BRICKLAYERS / BUILDING:

MARION COUNTY:

BUILDING	BASE RATE	\$21.54
	FRINGE BENEFITS	2.06

BRICKLAYERS / BUILDING:

WASHINGTON COUNTY:

Bricklayers:	BUILDING	BASE RATE	\$21.54
		FRINGE BENEFITS	2.06

Marble Setters / Terrazzo Workers / Tile Setters:

BUILDING	BASE RATE	\$21.49
	FRINGE BENEFITS	8.59

BRICKLAYERS / BUILDING: CONTINUED

WASHINGTON COUNTY:

Marble / Terrazzo / Tile Finishers:

BUILDING

BASE RATE	\$14.89
FRINGE BENEFITS	8.59

BRICKLAYERS / BUILDING:

TAYLOR COUNTY:

Bricklayers:

BUILDING

BASE RATE	\$21.54
FRINGE BENEFITS	2.06

Marble Setters, Terrazzo Workers & Tile Setters:

BUILDING

BASE RATE	\$21.49
FRINGE BENEFITS	8.59

Marble, Terrazzo & Tile Finishers:

BUILDING

BASE RATE	\$14.89
FRINGE BENEFITS	8.59

BRICKLAYERS / HEAVY HIGHWAY:

MARION, NELSON & WASHINGTON COUNTIES:

Bricklayers:

HEAVY & HIGHWAY

BASE RATE	\$24.82
FRINGE BENEFITS	10.71

BRICKLAYERS / HEAVY HIGHWAY:

TAYLOR COUNTY:

Bricklayers:

HEAVY & HIGHWAY

BASE RATE	\$22.90
FRINGE BENEFITS	8.50

CARPENTERS / BUILDING:

MARION, NELSON, & WASHINGTON COUNTIES:

Acoustical ceiling installation, cabinet installation, drywall hanging, form work, metal stud installation & soft floor-carpet only:

BUILDING

BASE RATE	\$22.90
FRINGE BENEFITS	14.39

CARPENTERS / BUILDING:

NELSON COUNTY:

Carpenter (all other work)

BUILDING

BASE RATE	\$17.02
FRINGE BENEFITS	4.33

CARPENTERS / BUILDING:

MARION & WASHINGTON COUNTIES:

Carpenter: (Form Work Only)

BUILDING

BASE RATE	\$15.26
FRINGE BENEFITS	2.85

CARPENTERS / BUILDING:

MARION COUNTY::

BUILDING

BASE RATE	\$17.08
FRINGE BENEFITS	3.67

CARPENTERS / BUILDING:

WASHINGTON COUNTY::

(excludes Form Work)

BUILDING

BASE RATE	\$13.63
FRINGE BENEFITS	2.90

CARPENTERS / BUILDING: CONTINUED

TAYLOR COUNTY

Excluding Form Work:	BUILDING	BASE RATE	\$21.98
		FRINGE BENEFITS	12.65
Form Work Only:	BUILDING	BASE RATE	\$15.26
		FRINGE BENEFITS	2.85
All other work:	BUILDING	BASE RATE	\$17.08
		FRINGE BENEFITS	3.67

CARPENTERS / HEAVY HIGHWAY:

MARION, NELSON, & WASHINGTON COUNTIES:

Carpenters:	HEAVY & HIGHWAY	BASE RATE	\$26.90
		FRINGE BENEFITS	14.46
Piledrivermen:	HEAVY & HIGHWAY	BASE RATE	\$27.15
		FRINGE BENEFITS	14.46
Divers:	HEAVY & HIGHWAY	BASE RATE	\$40.73
		FRINGE BENEFITS	14.46

CARPENTERS / HEAVY HIGHWAY:

TAYLOR COUNTY:

Carpenters:	HEAVY & HIGHWAY	BASE RATE	\$21.40
		FRINGE BENEFITS	8.50
Piledrivermen:	HEAVY & HIGHWAY	BASE RATE	\$21.05
		FRINGE BENEFITS	8.50

CEMENT MASONS / CONCRETE FINISHERS:

MARION, TAYLOR & WASHINGTON COUNTIES:

BUILDING	BASE RATE	\$19.08
	FRINGE BENEFITS	0.00

CEMENT MASONS:

NELSON COUNTY:

BUILDING	BASE RATE	\$21.00
	FRINGE BENEFITS	9.80

CEMENT MASONS:

TAYLOR COUNTY:

HEAVY & HIGHWAY	BASE RATE	\$21.25
	FRINGE BENEFITS	8.50

ELECTRICIANS:

MARION, TAYLOR & WASHINGTON COUNTIES:

Electricians:	BUILDING	BASE RATE	\$29.48
		FRINGE BENEFITS	14.37

ELECTRICIANS: CONTINUED

NELSON COUNTY:

Electricians:	BUILDING	BASE RATE	\$24.15
		FRINGE BENEFITS	1.97

ELECTRICIANS:

TAYLOR COUNTY:

Electricians:	HEAVY & HIGHWAY	*BASE RATE	\$29.36
		FRINGE BENEFITS	10.55

***When required to work from bosom chairs on bridges where subject to direct fall, except when using JLG's and bucket trucks up to 75 feet; Add 25% to base rate for 50 to 75 feet and 50% over 75 feet.**

ELECTRICIANS / LINE CONSTRUCTION (BUILDING):

MARION, NELSON, TAYLOR & WASHINGTON COUNTIES:

Cable Splicer		BASE RATE	\$32.19
		FRINGE BENEFITS	11.88

Equipment Operator:

Operator A: John Henry Rock Drill, D6 (or equivalent) and above, Trackhoe Digger, Cranes (> than 25 tons < than 45 tons) :

BASE RATE	\$28.81
FRINGE BENEFITS	11.13

Operator B: Cranes (6-25 tons), Backhoes, Road Tractor, Dozer up to D5, Pressure Digger-Wheeled or Tracked, all Tension Wire Stringing Equipment:

BASE RATE	\$25.42
FRINGE BENEFITS	10.38

Operator C: Trencher, Vibratory Compactor, Ground Rod Driver, Boom Truck (6 ton or below), Skid Steer Loaders:

BASE RATE	\$20.33
FRINGE BENEFITS	9.25

Groundman:

BASE RATE	\$17.12
FRINGE BENEFITS	8.55

Lineman and Technician:

BASE RATE	\$29.36
FRINGE BENEFITS	11.25

Cranes 45 tons or larger paid 100% of journeyman lineman's rate.

ELEVATOR MECHANICS:

MARION, NELSON, TAYLOR & WASHINGTON COUNTIES:

BASE RATE	\$36.94
FRINGE BENEFITS	20.035

GLAZIERS:

MARION, TAYLOR & WASHINGTON COUNTIES:

BUILDING

BASE RATE	\$25.18
FRINGE BENEFITS	10.30

GLAZIERS:

NELSON COUNTY:

BUILDING

BASE RATE	\$21.61
FRINGE BENEFITS	9.84

IRONWORKERS:

MARION, NELSON & WASHINGTON COUNTIES:
Structural / Ornamental / Reinforcing:

BASE RATE	\$26.47
FRINGE BENEFITS	19.30

IRONWORKERS:

TAYLOR COUNTY:
Structural / Ornamental / Reinforcing:

BASE RATE	\$26.47
FRINGE BENEFITS	19.30

Ironworker: HEAVY & HIGHWAY

BASE RATE	\$24.99
FRINGE BENEFITS	18.22

LABORERS / BUILDING:

MARION, TAYLOR & WASHINGTON COUNTIES:
Grade Checker & Mason Tender-Brick, Mason Tender Cement/Concrete:

BUILDING

BASE RATE	\$18.77
FRINGE BENEFITS	9.13

Carpenter Tender: BUILDING

BASE RATE	\$11.55
FRINGE BENEFITS	0.00

LABORERS / BUILDING:

MARION & WASHINGTON COUNTIES:
Common or General BUILDING

BASE RATE	\$15.07
FRINGE BENEFITS	4.78

LABORERS / BUILDING:

TAYLOR COUNTY:
Common or General BUILDING

BASE RATE	\$11.80
FRINGE BENEFITS	2.26

LABORERS / BUILDING:

NELSON COUNTY:
Grader checker, mason tender-brick and screw operator:
BUILDING

BASE RATE	\$18.77
FRINGE BENEFITS	9.13

Landscape Laborer: BUILDING

BASE RATE	18.42
FRINGE BENEFITS	9.13

Laborer: Common or General BUILDING

BASE RATE	\$14.36
FRINGE BENEFITS	2.86

Laborer: Fence Erection BUILDING

BASE RATE	\$23.72
FRINGE BENEFITS	0.00

Mason Tender-cement / concrete: BUILDING

BASE RATE	\$14.45
FRINGE BENEFITS	0.00

LABORERS / BUILDING: CONTINUED

NELSON COUNTY:

Laborer: Mason Tender Brick (Hod)

BUILDING

BASE RATE	\$21.83
FRINGE BENEFITS	0.00

Laborer: Pipelayer

BUILDING

BASE RATE	\$16.87
FRINGE BENEFITS	8.03

LABORERS / HEAVY HIGHWAY:

MARION, NELSON & WASHINGTON COUNTIES:

GROUP 1: Aging & Curing of Concrete; Asbestos Abatement Worker; Asphalt Plant; Asphalt; Batch Truck Dump; Carpenter Tender; Cement Mason Tender; Cleaning of Machines; Concrete; Demolition; Dredging; Environmental – Nuclear, Radiation, Toxic & Hazardous Waste – Level D; Flagperson; Grade Checker; Hand Digging & Hand Back Filling; Highway Marker Placer; Landscaping, Mesh Handler & Placer; Puddler; Railroad; Rip-rap & Grouter; Right-of-Way; Sign, Guard Rail & Fence Installer; Signal Person; Sound Barrier Installer; Storm & Sanitary Sewer; Swamper; Truck Spotter & Dumper; Wrecking of Concrete Form; & General Cleanup:

HEAVY & HIGHWAY

BASE RATE	\$22.01
FRINGE BENEFITS	10.95

GROUP 2: Batter Board Man (Sanitary & Storm Sewer); Brickmason Tender; Mortar Mixer Operator; Scaffold Builders: Burner & Welder; Bushhammer; Chain Saw Operator; Hand Held or Walk Behind Concrete Saw Operator; Deckhand Scow Man; Dry Cement Handler; Environmental – Nuclear, Radiation, Toxic & Hazardous Waste – Level C; Forklift Operator for Masonry; Form Setter; Green Concrete Cutting; Hand Operated Grouter & Grinder Machine Operator; Jackhammer; Pavement Breaker; Paving Joint Machine; Pipelayer; Plastic Pipe Fusion; Power Driven Georgia Buggy & Wheel Barrow; Power Post Hole Digger; Precast Manhole Setter; Walk-Behind Tamper; Walk-Behind Trencher; Sand Blaster; Concrete Chipper; Surface Grinder; Vibrator Operator; & Wagon Driller:

HEAVY & HIGHWAY

BASE RATE	\$22.26
FRINGE BENEFITS	10.95

GROUP 3: Asphalt Luteman & Raker; Gunnite Nozzleman; Gunnite Operator & Mixer; Grout Pump Operator; Side Rail Setter; Rail Paved Ditch; Screw Operator; Tunnel (Free air); & Water Blaster:

HEAVY & HIGHWAY

BASE RATE	\$22.31
FRINGE BENEFITS	10.95

GROUP 4: Caisson Worker (Free Air); Cement Finisher; Environmental - Nuclear, Radiation, Toxic & Hazardous Waste - Levels A & B; Miner & Driller (Free Air); Tunnel Blaster; & Tunnel Mucker (Free Air), Directional & Horizontal Boring; Air Truck Driller (All Types); Powderman & Blaster; Troxler & Concrete Tester if Laborer is Utilized:

HEAVY & HIGHWAY

BASE RATE	\$22.91
FRINGE BENEFITS	10.95

LABORERS / HEAVY HIGHWAY:

TAYLOR COUNTY:

General, Flagperson, & Steam Jenny:

HEAVY & HIGHWAY

BASE RATE	\$19.45
FRINGE BENEFITS	8.50

Batch Truck Dumper, & Deck Hand or Scow Man & Hand Blade Operator:

HEAVY & HIGHWAY

BASE RATE	\$19.70
FRINGE BENEFITS	8.50

LABORERS / HEAVY HIGHWAY: CONTINUED

TAYLOR COUNTY:

Power Driven Tool Operator of the following: Wagon Drill, Chain Saw, Sand Blaster, Concrete Chipper, Pavement Breaker, Vibrator, Power Wheelbarrow & Power Buggy, Sewer Pipe Layer, Bottom Man, Dry Cement Handler, Concrete Rubber, & Mason Tender:

HEAVY & HIGHWAY	BASE RATE	\$19.80
	FRINGE BENEFITS	8.50

Asphalt Lute & Rakerman, Side Rail Setter:

HEAVY & HIGHWAY	BASE RATE	\$19.85
	FRINGE BENEFITS	8.50

Gunnite Nozzle Man & Gunnite Operator:

HEAVY & HIGHWAY	BASE RATE	\$19.95
	FRINGE BENEFITS	8.50

Tunnel Laborer (Free Air): HEAVY & HIGHWAY

BASE RATE	\$20.00
FRINGE BENEFITS	8.50

Tunnel Mucker (Free Air): HEAVY & HIGHWAY

BASE RATE	\$20.05
FRINGE BENEFITS	8.50

Tunnel Miner, Blaster & Driller (Free Air):

HEAVY & HIGHWAY	BASE RATE	\$20.40
	FRINGE BENEFITS	8.50

Caisson Worker:

HEAVY & HIGHWAY	BASE RATE	\$20.95
	FRINGE BENEFITS	8.50

Powderman:

HEAVY & HIGHWAY	BASE RATE	\$21.05
	FRINGE BENEFITS	8.50

Drill Operator of Percussion Type Drills which are both powered & propelled by an independent air supply:

HEAVY & HIGHWAY	BASE RATE	\$22.25
	FRINGE BENEFITS	8.50

MILLWRIGHTS:

MARION, NELSON & WASHINGTON COUNTIES:

BASE RATE	\$24.18
FRINGE BENEFITS	15.64

MILLWRIGHTS:

TAYLOR COUNTY::

BASE RATE	\$22.95
FRINGE BENEFITS	13.50

OPERATING ENGINEERS / BUILDING:

MARION, TAYLOR & WASHINGTON COUNTIES:

GROUP 1: Bobcat, skid loader, bulldozer, cherry picker, crane, forklift, grader / blade & trackhoe:

BUILDING	*BASE RATE	\$26.84
	FRINGE BENEFITS	13.90

***Crane with boom 150 feet and over, including jib, shall received \$.75 above Rate.
All cranes with piling leads will receive \$.50 above rate regardless of boom length.**

OPERATING ENGINEERS / BUILDING: CONTINUED

MARION, TAYLOR & WASHINGTON COUNTIES:

Oiler:	BUILDING	BASE RATE	\$23.13
		FRINGE BENEFITS	13.90

Operator: Backhoe / Excavator/Trackhoe:	BUILDING	BASE RATE	\$22.33
		FRINGE BENEFIT	7.72

Operator: Loader	BUILDING	BASE RATE	\$21.10
		FRINGE BENEFITS	9.15

OPERATING ENGINEERS / BUILDING:

NELSON COUNTY:

GROUP 1: Concrete pump, elevating grader and all types of loaders, forklift (regardless of lift height), motor scraper, bulldozer, mechanic, power blade, motor grader, forklift (regardless of lift height & except when used for masonry construction) self contained core drill, rotary drill, kecal loader, hydrocrane, subgrader, backhoe, backhoe track, excavator, trackhoe:

BUILDING	*BASE RATE	\$26.85
	FRINGE BENEFITS	13.90

***Crane with boom 150 feet and over, including jib, shall received \$.75 above Group 1**

GROUP 2: Crane (including overhead, rough terrain, truck & tower), hoist (1 drum), hoisting engine (2 or more drums), hoist:

BUILDING	BASE RATE	\$27.91
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FRINGE BENEFITS	13.90
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GROUP 3: Form grader, tractor (50 hp and over), farm tractor with attachments, except backhoe, highlift & endloader, elevator (when used for hoisting), hoisting engine (1 drum or buck hoist):

BUILDING	BASE RATE	\$23.17
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FRINGE BENEFITS	13.90
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GROUP 4: Tractor (under 50 hp), crane oiler:

BUILDING	BASE RATE	\$21.57
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FRINGE BENEFITS	13.90
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All cranes with piling leads will receive \$.50 above Group 1 regardless of boom length.

OPERATOR	COMPACTOR	BASE RATE	\$24.53
		FRINGE BENEFITS	0.00

OPERATOR	HIGHLIFT	BASE RATE	\$25.00
		FRINGE BENEFITS	0.00

OPERATOR	PAVER	BASE RATE	\$17.18
		FRINGE BENEFITS	8.03

OPERATOR	ROLLER	BASE RATE	\$18.42
		FRINGE BENEFITS	9.15

OPERATING ENGINEERS / HEAVY & HIGHWAY:

MARION, NELSON & WASHINGTON COUNTIES:

GROUP 1: A-Frame Winch Truck; Auto Patrol; Backfiller; Batch Plant; Bituminous Paver; Bituminous Transfer Machine; Boom Cat; Bulldozer; Mechanic; Cableway; Carry-all Scoop; Carry Deck Crane; Central Compressor Plant; Clamshell; Concrete Mixer (21 cu. ft. or Over); Concrete Paver; Truck-Mounted Concrete Pump; Core Drill; Crane; Crusher Plant; Derrick; Derrick Boat; Ditching & Trenching Machine; Dragline; Dredge Operator; Dredge Engineer; Elevating Grader & Loaders; Grade-All; Guries; Heavy Equipment Robotics Operator / Mechanic; High Lift; Hoe-Type Machine; Hoist (Two or More Drums); Hoisting Engine (Two or More Drums); Horizontal Directional Drill Operator; Hydrocrane; Hyster; KeCal Loader; LeTourneau; Locomotive; Mechanic; Mechanically Operated Laser Screed; Mechanic Welder; Mucking Machine; Motor Scraper; Orangepeel Bucket; Piledriver; Power Blade; Pumpcrete; Push Dozer; Rock Spreader, attached to equipment; Rotary Drill; Roller (Bituminous); Scarifier; Scoopmobile; Shovel; Side Boom; Subgrader; Tailboom; Telescoping Type Forklift; Tow or Push Boat; Tower Crane (French, German & other types); Tractor Shovel; Truck Crane; Tunnel Mining Machines, including Moles, Shields or similar types of Tunnel Mining Equipment:

HEAVY & HIGHWAY	*BASE RATE	\$28.00
	FRINGE BENEFITS	13.90

GROUP 2: Air Compressor (Over 900 cu. ft. per min.); Bituminous Mixer; Boom Type Tamping Machine; Bull Float; Concrete Mixer (Under 21 cu. ft); Dredge Engineer; Electric Vibrator; Compactor / Self-Propelled Compactor; Elevator (One Drum or Buck Hoist); Elevator (when used to Hoist Building Material); Finish Machine; Firemen & Hoist (One Drum); Flexplane; Forklift (Regardless of Lift Height); Form Grader; Joint Sealing Machine; Outboard Motor Boat; Power Sweeper (Riding Type); Roller (Rock); Ross Carrier; Skid Mounted or Trailer Mounted Concrete Pump; Skid Steer Machine with all Attachments; Switchman or Brakeman; Throttle Valve Person; Tractair & Road Widening Trencher; Tractor (50 HP or Over); Truck Crane Oiler; Tugger; Welding Machine; Well Points; & Whirley Oiler:

HEAVY & HIGHWAY	*BASE RATE	\$25.45
	FRINGE BENEFITS	13.90

GROUP 3: All Off Road Material Handling Equipment, Including Articulating Dump Truck; Greaser on Grease Facilities servicing Heavy Equipment:

HEAVY & HIGHWAY	*BASE RATE	\$25.85
	FRINGE BENEFITS	13.90

GROUP 4: Bituminous Distributor; Burlap & Curing Machine; Cement Gun; Concrete Saw; Conveyor; Deckhand Oiler; Grout Pump; Hydraulic Post Driver; Hydro Seeder; Mud Jack; Oiler; Paving Joint Machine; Power Form Handling Equipment; Pump; Roller (Earth); Steersman; Tamping Machine; Tractor (Under 50 HP); & Vibrator:

HEAVY & HIGHWAY	*BASE RATE	\$25.17
	FRINGE BENEFITS	13.90

***Cranes with booms 150 ft. & over (including jib) \$1.00 over Group 1 Rate.**
Employees assigned to work below ground level are to be paid 10% above basic wage rate.
This does not apply to open cut work.

OPERATING ENGINEERS / HEAVY & HIGHWAY:

TAYLOR COUNTY:

Group 1: Auto patrol, batcher plant, bituminous paver, cable-way, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge engineer, elevator (regardless of ownership when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine, locomotive, LeTourneau or carry-all scoop, bulldozer, mechanic, orangepeel bucket, piledriver, power blade, roller (bituminous), roller (earth), roller (rock), scarifier, shovel, tractor shovel, truck crane, well points, winch truck, push dozer, grout pump, high lift, fork lift (regardless of lift height), all types of boom cats, multiple operator, core drill, tow or push boat, A-Frame winch truck, concrete paver, gradeall, hoist, hyster, material pump, pumpcrete, ross carrier, sheepfoot, sideboom, throttle-valve man, rotary drill, power generator, mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German and other types), hydrocrane, tugger, backfiller guries, self-propelled compactor, self-contained hydraulic percussion drill:

HEAVY & HIGHWAY	BASE RATE	\$24.10
	FRINGE BENEFITS	8.50

Group 2: _All air compressors (200 cu. ft. per min. or greater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, tractor (50 H.P. and over), bull float, finish machine, outboard motor boat, brakeman, whirly oiler, tractair and road widening trencher, articulating trucks:

HEAVY & HIGHWAY	BASE RATE	\$21.20
	FRINGE BENEFITS	8.50

Group 3: Greaser on grease facilities servicing heavy equipment:

HEAVY & HIGHWAY	BASE RATE	\$21.40
	FRINGE BENEFITS	8.50

Group 4: Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, tamping machine, tractors (under 50 H.P.), vibrator, oiler, air compressors (under 200 cu. ft. per min. capacity), concrete saw, burlap and curing machine, hydro seeder, power form handling equipment, deckhand oiler, hydraulic post driver:

HEAVY & HIGHWAY	BASE RATE	\$20.79
	FRINGE BENEFITS	8.50

PAINTERS:

MARION, NELSON & WASHINGTON COUNTIES:

Brush & Roller Only:

BASE RATE	\$18.50
FRINGE BENEFITS	11.05

Sign Painter & Erector:

BUILDING

BASE RATE	\$20.23
FRINGE BENEFITS	3.25

Power Tools, Spray, Sandblasting & Waterblasting & Steam Cleaning:

HEAVY HIGHWAY

BASE RATE	\$19.50
FRINGE BENEFITS	10.30

Brush & Roller

HEAVY HIGHWAY

BASE RATE	\$18.50
FRINGE BENEFITS	10.30

PAINTERS:

TAYLOR COUNTY:

Brush & Roller Only:

BUILDING

BASE RATE	\$18.50
FRINGE BENEFITS	11.05

Sign Painter & Erector:

BUILDING

BASE RATE	\$20.23
FRINGE BENEFITS	3.25

PAINTERS: CONTINUED

TAYLOR COUNTY:

Bridges:	HEAVY & HIGHWAY	BASE RATE	\$23.92
		FRINGE BENEFITS	10.07
All Other:	HEAVY & HIGHWAY	BASE RATE	\$19.92
		FRINGE BENEFITS	9.57

PLUMBERS / PIPEFITTERS / STEAMFITTERS:

MARION, NELSON & WASHINGTON COUNTIES:

(Includes HVAC Pipe Installation)

BASE RATE	\$32.00
FRINGE BENEFITS	17.17

PLUMBERS / PIPEFITTERS / STEAMFITTERS:

TAYLOR COUNTY:

(Includes HVAC Pipe Installation)

	BUILDING	BASE RATE	\$32.00
		FRINGE BENEFITS	17.17
Plumbers:	HEAVY & HIGHWAY	BASE RATE	\$22.52
		FRINGE BENEFITS	7.80

ROOFERS:

NELSON COUNTY:

(Including Built Up, Composition and Single Ply, excluding metal roofs):

BASE RATE	\$21.53
FRINGE BENEFITS	8.12

Shake & Shingle Roof:		BASE RATE	\$19.31
		FRINGE BENEFITS	6.25

ROOFERS:

MARION, TAYLOR & WASHINGTON COUNTIES:

BUILDING

BASE RATE	\$16.42
FRINGE BENEFITS	1.50

SHEETMETAL WORKERS:

MARION, NELSON & WASHINGTON COUNTIES:

(Including Metal Roofs):

BASE RATE	\$28.66
FRINGE BENEFITS	17.46

SHEETMETAL WORKERS:

TAYLOR COUNTY:

(Including Metal Roofs & HVAC duct & system installation):

BUILDING

BASE RATE	\$28.66
FRINGE BENEFITS	17.46

HEAVY & HIGHWAY

BASE RATE	\$20.40
FRINGE BENEFITS	7.80

SPRINKLER FITTERS:

MARION, NELSON, TAYLOR & WASHINGTON COUNTIES:

BASE RATE	\$30.14
FRINGE BENEFITS	17.12

TRUCK DRIVERS / BUILDING:

MARION, NELSON & WASHINGTON COUNTIES:

3 Tons & Under, Greaser, Tire Changer, & Mechanic Tender:

BUILDING

BASE RATE	\$19.57
FRINGE BENEFITS	12.57

Over 3 Tons, Semi-Trailer or Pole Trailer, Dump Tandem Axles, Farm Tractor (When used to pull building material & equipment):

BUILDING

BASE RATE	\$19.68
FRINGE BENEFITS	12.57

Concrete Mixer (Hauling on jobsites), & Truck Mechanic:

BUILDING

BASE RATE	\$19.75
FRINGE BENEFITS	12.17

Euclid's & Other Heavy Moving Equipment, Lowboy, Winch, A-Frame & Monorail Truck (To transport building materials):

BUILDING

BASE RATE	\$19.85
FRINGE BENEFITS	12.17

Building: Truck Drivers working on hazardous or toxic waste sites, add \$4.00 to base.

TRUCK DRIVERS / BUILDING:

TAYLOR COUNTY:

3 Tons & Under, Greaser, Tire Changer, & Mechanic Tender:

BUILDING

BASE RATE	\$19.57
FRINGE BENEFITS	12.17

Over 3 Tons, Semi-Trailer or Pole Trailer, Dump Tandem Axles, Farm Tractor (When used to pull building material & equipment):

BUILDING

BASE RATE	\$19.68
FRINGE BENEFITS	12.17

Concrete Mixer (Hauling on jobsites), & Truck Mechanic:

BUILDING

BASE RATE	\$19.75
FRINGE BENEFITS	12.17

Euclid's & Other Heavy Moving Equipment, Lowboy, Winch, A-Frame & Monorail Truck (To transport building materials):

BUILDING

BASE RATE	\$19.85
FRINGE BENEFITS	12.17

Building: Truck Drivers working on hazardous or toxic waste sites, add \$4.00 to base.

TRUCK DRIVERS / HEAVY HIGHWAY:

MARION, NELSON & WASHINGTON COUNTIES:

Mobile Batch Truck Tender: HEAVY & HIGHWAY

BASE RATE	\$16.57
FRINGE BENEFITS	7.34

Greaser, Tire Changer, & Mechanic Tender:

HEAVY & HIGHWAY

BASE RATE	\$16.68
FRINGE BENEFITS	7.34

TRUCK DRIVERS / HEAVY HIGHWAY: CONTINUED

MARION, NELSON & WASHINGTON COUNTIES:

Single Axle Dump & Flatbed; Semi-Trailer or Pole Trailer when used to pull building materials & equipment;
Tandem Axle Dump; Distributor; Mixer & Truck Mechanic:

HEAVY & HIGHWAY	BASE RATE	\$16.86
	FRINGE BENEFITS	7.34

Euclid, Other Heavy Earthmoving Equipment & Lowboy; Articulator Cat Truck, 5 Axle Vehicle; Winch & A-Frame
when used in transporting materials; Ross Carrier; Forklift when used to transport building materials; & Pavement
Breaker:

HEAVY & HIGHWAY	BASE RATE	\$16.96
	FRINGE BENEFITS	7.34

TRUCK DRIVERS / HEAVY HIGHWAY:

TAYLOR COUNTY:

Truck Tender and Warehouseman:

HEAVY & HIGHWAY	BASE RATE	\$19.70
	FRINGE BENEFITS	8.50

Driver, Winch Truck and A-Frame when used in transporting materials:

HEAVY & HIGHWAY	BASE RATE	\$19.80
	FRINGE BENEFITS	8.50

Driver (Semi-trailer or pole trailer), Driver (Dump Truck, Tandem Axle), Driver of Distributor:

HEAVY & HIGHWAY	BASE RATE	\$19.90
	FRINGE BENEFITS	8.50

Driver on Mixer trucks (all types):

HEAVY & HIGHWAY	BASE RATE	\$19.95
	FRINGE BENEFITS	8.50

Truck Mechanic:

HEAVY & HIGHWAY	BASE RATE	\$20.00
	FRINGE BENEFITS	8.50

Driver (3 tons and under), Tire Changer, Truck Mechanic Tender):

HEAVY & HIGHWAY	BASE RATE	\$20.03
	FRINGE BENEFITS	8.50

Driver on Pavement Brakers: HEAVY & HIGHWAY

BASE RATE	\$20.05
FRINGE BENEFITS	8.50

Driver (over 3 tons), Driver (truck mounted rotary drill):

HEAVY & HIGHWAY	BASE RATE	\$20.24
	FRINGE BENEFITS	8.50

Driver, Euclid and other Heavy Earth Moving Equipment:

HEAVY & HIGHWAY	BASE RATE	\$20.81
	FRINGE BENEFITS	8.50

Greaser on greasing facilities: HEAVY & HIGHWAY

BASE RATE	\$20.90
FRINGE BENEFITS	8.50

END OF DOCUMENT
CR 4-016 2013
November 26, 2013

**Exhibit E - Anticipated Progress and Payment Schedule
Guaranteed Energy Savings Contract
Nelson County Schools**



Anticipated Progress and Payment Schedule:

Nelson County Schools Energy Upgrades Project					
Anticipated Draw Schedule					
Board Approval	4/15/2014				
Contract Date	4/16/2014				
Billing	Invoice Date	Payment Due	Project Activities	Draw %	Draw \$
Equipment	Varies	Varies	Owner Direct Purchase Package	Full	\$ 600,000.00
MAY	5/1/2014	5/25/2014	Design, Plan Review, P&P Bond, Permitting	10.0%	\$ 271,901.00
JUN	6/1/2014	6/25/2014	Mobilization	12.0%	\$ 326,281.20
JUL	7/1/2014	7/25/2014	Construction	40.0%	\$ 1,087,604.00
AUG	8/1/2014	8/25/2014	Construction, Substantial Completion	30.0%	\$ 815,703.00
SEP	9/1/2014	9/25/2014	Punch List, Commissioning	5.0%	\$ 135,950.50
OCT	10/1/2014	10/25/2014	Commissioning	1.0%	\$ 27,190.10
NOV	11/1/2014	11/25/2014	Commissioning	1.0%	\$ 27,190.10
DEC	12/1/2014	12/25/2014	Commissioning, Final Completion, Project Close-Out	1.0%	\$ 27,190.10
				100.0%	\$ 3,319,010.00

**Exhibit F – Sample Application for Payment
Guaranteed Energy Savings Contract
Nelson County Schools**



Sample Application for Payment:

The following AIA Document G702 is an example of the Application and Certification for Payment that will be utilized on this project.

APPLICATION AND CERTIFICATION FOR PAYMENT

TO OWNER:

PROJECT:

AIA DOCUMENT G702

APPLICATION NO:

0

PAGE ONE OF

PAGES

Distribution to:

<input type="checkbox"/>	OWNER
<input type="checkbox"/>	ARCHITECT
<input type="checkbox"/>	CONTRACTOR
<input type="checkbox"/>	
<input type="checkbox"/>	

FROM CONTRACTOR:

VIA ARCHITECT:

PERIOD TO:

PROJECT NOS:

CONTRACT FOR:

CONTRACT DATE:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$	
2. Net change by Change Orders	\$	0.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	0.00
5. RETAINAGE:		
a. % of Completed Work (Column D + E on G703)	\$	\$0.00
b. % of Stored Material (Column F on G703)	\$	Included in above
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$	0.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)	\$	0.00
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	
8. CURRENT PAYMENT DUE	\$	0.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	

The undersigned Design Builder certifies that to the best of the Design Builder's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Design Builder for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

DESIGN BUILDER:

By:

Date:

State of:

County of:

Subscribed and sworn to before me this

day of

Notary Public:

My Commission expires:

DESIGN BUILDER'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Design Builder certifies to the Owner that to the best of the Design Builder's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Design Builder is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

DESIGN BUILDER:

By:

Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Design Builder named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Design Builder under this Contract.

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing
Design Builder's signed certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:
APPLICATION DATE:
PERIOD TO:
DESIGN BUILDER'S PROJECT NO:

A	B	C	D	E	F	G	H	I	J
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G ÷ C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
	(Fill in & break down contract values)								
	(Add any change order(s) descriptions)								
	GRAND TOTALS	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00

Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity

**Exhibit G - Schedule of Values
Guaranteed Energy Savings Contract
Nelson County Schools**



Schedule of Values:

Nelson County Schools Energy Upgrades Project Schedule of Values	
Owner Direct Purchase Package	\$ 600,000.00
A/E Fees	\$ 185,725.00
Performance and Payment Bond, Permitting, Plan Review, Warranty	\$ 94,597.00
Project Administration & Construction Management	\$ 51,855.00
Cox's Creek HVAC Replacement	\$ 1,581,577.50
Nelson County High School HVAC and Plumbing Improvements	\$ 461,953.00
Pump Modifications	\$ 51,855.00
Lighting Improvements	\$ 116,155.20
Central Office / Horizons Academy Controls, Timer Switch Controls	\$ 97,487.40
Water Conservation Measures	\$ 4,148.40
Utility Rate Modifications	\$ 4,666.95
Commissioning and Closeout	\$ 68,989.55
Total	\$ 3,319,010.00

**Exhibit H – Project Scope of Work
Guaranteed Energy Savings Contract
Nelson County Schools**



Project Scope of Work:

H.1 Scope of Work Summary

The project consists of various Energy Conservation Measures (ECM) across multiple facilities. The scope of work is summarized in *Table H.1*.

Table H.1. – Scope of Work Summary

Category	Tag	Scope Description	Facility
HVAC	H.1	HVAC System Replacement	Cox's Creek ES
	H.2	HVAC System Upgrades	Nelson County HS
	H.3	Pump Modifications	Multiple
Plumbing	P.1	Thermostatic Mixing Valve	Nelson County HS
Lighting Upgrades & Modifications	L.1	Fluorescent Fixture De-Lamping	Multiple
	L.2	Gym Lighting	Nelson County HS
	L.3	Site Lighting Control	Multiple
	L.4	LED Exterior Lighting	Multiple
	L.5	Misc. Lighting Upgrades	Multiple
Controls	C.1	Controls Program Optimization	Multiple
	C.2	Controls System Upgrade	Central Office/Horizons
	C.3	Timer Switch Controls	Multiple
Water Conservation	W.1	Irrigation Sewer Credits	Nelson County HS
	W.2	Cooling Tower Sewer Credits	
Building Envelope	B.1	Seal Roof Relief Hoods	Nelson County HS
			Cox's Creek ES
Utility Rate Modifications	UR.1	Electric Rate Modifications	Cox's Creek ES
	UR.2		Bloomfield MS
	UR.3		Thomas Nelson HS
	UR.4		Foster Height ES
	UR.5		Nelson County ELC
	UR.6	Gas Rate Modifications	Nelson County HS

H.2 Energy Conservation Measure Narratives

The following narratives describe the Energy Conservation Measures included in the scope of the project. In addition to the following descriptions, the scope of work is further clarified and defined in the project Plans and Specifications.

- ECM: H.1 – HVAC System Replacement
- Facility: Cox's Creek Elementary School
- Narrative: The existing 2-pipe hot and chilled water system will be demolished in its entirety, with the exception of the hydronic piping which will be re-used. The new HVAC system will be a ground source heat pump system. All required mechanical, electrical, controls and general trades work is included. The scope of work includes the following items:
- Removal of the existing air-cooled chiller, propane boiler, pumps, fan coil units, unit ventilators and associated controls system;
 - Provide new HVAC equipment and installation, consisting of high efficiency geothermal water source heat pumps, pumps with variable frequency drives, ventilation units with energy recovery, and a kitchen makeup air unit;
 - Provide geothermal well field to match the space heating and cooling loads;
 - Provide web-based building automation system;
 - Provide patch and repair of concrete, asphalt, wall openings and ceiling grid as required and per the Plans;
 - Furnish new acoustical ceiling tile, installed by Owner.
- ECM: H.2 – HVAC System Upgrades
- Facility: Nelson County High School
- Narrative: The overall goal of this ECM is to convert the entire building (with the exception of the multipurpose room) over to the geothermal heating system. In order to achieve that goal, the following scope of work will be provided.
- Remove the existing gas-fired boilers, heat exchangers, hot water pumps, and the abandoned gas-fired domestic water heater;
 - Remove the existing air-cooled chiller;
 - Remove (2) of the existing gymnasium air handling units;
 - Interconnect the 1997 and 2001 heat pump loops to allow geothermal heating/cooling in the 1997 heat pump system;
 - Provide new ground source water-to-water heat pumps for hot and chilled water production;
 - Replace the existing 90-ton fluid cooler with a new 150-ton fluid cooler;

**Exhibit H – Project Scope of Work
Guaranteed Energy Savings Contract
Nelson County Schools**



- Provide a new web-based building automation system to control the central heating and cooling plant equipment.

ECM: H.3 – Pump Modifications

Facility: Nelson County High School, Old Kentucky Home Middle School, Bloomfield Elementary School, Boston School, Central Office

Narrative: The overall goal of this ECM is to remedy the excessive energy consumption of the oversized pumping systems. This will be accomplished either by replacing pumps, retrofitting the pumps with variable frequency drives, or re-commissioning the existing variable frequency drives.

- Nelson County High School – replace pumps P-1A/B, P-2A/B/C, and provide variable frequency drives for all pumps;
- Old Kentucky Home Middle School, Bloomfield Elementary School, Boston School – provide variable frequency drives for all pumps;
- Central Office – re-commission existing variable frequency drive.

ECM: P.1 – Thermostatic Mixing Valve

Facility: Nelson County High School

Narrative: This ECM will eliminate the need for the 18 kW electric water heater that serves the dishwasher. The existing high efficiency gas-fired water heater and storage tank will be used to serve the kitchen. The water heater temperature setpoint will be raised to 165°F to accommodate the needs of the kitchen, and a thermostatic mixing valve will be used to temper the water serving the rest of the building to 120°F.

ECM: L.1 – Fluorescent Fixture De-lamping

Facility: Nelson County High School, Old Kentucky Home Middle School, Bloomfield Elementary School, New Haven School

Narrative: These facilities have several spaces that are significantly over lit relative to KDE facility regulations. CMTA is responsible for communicating the scope of the de-lamping ECM with the Owner, and the Owner will be responsible for the labor, handling, storage or disposal of lamps.

**Exhibit H – Project Scope of Work
Guaranteed Energy Savings Contract
Nelson County Schools**



<u>ECM:</u>	L.2 – Gym Lighting
<u>Facility:</u>	Nelson County High School
<u>Narrative:</u>	The existing 400 watt metal halide light fixtures in the main and auxiliary gymnasiums will be replaced with new LED fixtures. The main gym lighting will be designed to deliver 75 foot-candles on the playing floor. The auxiliary gym lighting will be designed to deliver 50 foot-candles on the playing floor.
<u>ECM:</u>	L.3 – Site Lighting Control
<u>Facility:</u>	Nelson County High School, Cox’s Creek Elementary School, Old Kentucky Home Middle School, Bloomfield Elementary School, Boston School, Central Office
<u>Narrative:</u>	Astronomic time clock lighting controls will be utilized at each of these facilities to control site lighting. Controls will be programmed to shut off parking lot lights during periods of inactivity.
<u>ECM:</u>	L.4 – LED Exterior Lighting
<u>Facility:</u>	Nelson County High School, Cox’s Creek Elementary School, Old Kentucky Home Middle School, Bloomfield Elementary School, Boston School
<u>Narrative:</u>	<p>The existing metal halide wall packs and canopy down lights will be replaced with an LED equivalent.</p> <ul style="list-style-type: none">▪ Nelson County High School – replace (48) existing 100 watt metal halide canopy down lights with the appropriate LED equivalent;▪ Cox’s Creek Elementary School – replace (13) existing 175 watt metal halide wall packs, and (4) 100 watt canopy down lights with the appropriate LED equivalents;▪ Old Kentucky Home Middle School - replace (29) existing 100 watt metal halide wall packs with the appropriate LED equivalent;▪ Bloomfield Elementary School – replace (6) existing 100 watt metal halide wall packs with the appropriate LED equivalent;▪ Boston School – replace (31) existing 100 watt metal halide wall packs with the appropriate LED equivalent.

**Exhibit H – Project Scope of Work
Guaranteed Energy Savings Contract
Nelson County Schools**



<u>ECM:</u>	L.5 – Miscellaneous Lighting Upgrades
<u>Facility:</u>	Nelson County High School, Cox’s Creek Elementary School
<u>Narrative:</u>	<p>This ECM addresses the following lighting conditions at each of the facilities.</p> <ul style="list-style-type: none">▪ Replace existing incandescent exit signs with an LED equivalent;▪ Retrofit T12 fluorescent fixtures with a T8 lamp and ballast solution;▪ Replace 100 watt or less incandescent screw-in lamps with an equivalent LED lamp;▪ Utilize occupancy sensors in the applications indicated on the Plans.
<u>ECM:</u>	C.1 – Controls Program Optimization
<u>Facility:</u>	Nelson County High School, Old Kentucky Home Middle School, Bloomfield Elementary School, Boston School, New Haven School
<u>Narrative:</u>	<p>The existing controls systems will be reviewed and adjusted to optimize the facility operations and conserve energy. Temperature setpoints and occupancy schedules will be reviewed and set appropriately.</p>
<u>ECM:</u>	C.2 – Controls System Upgrade
<u>Facility:</u>	Central Office, Horizons Academy
<u>Narrative:</u>	<p>A new web-based building automation system will be provided to control the operation of the existing geothermal water source heat pump systems serving these buildings.</p>
<u>ECM:</u>	C.3 – Timer Switch Controls
<u>Facility:</u>	Nelson County High School, Cox’s Creek Elementary School, Old Kentucky Home Middle School, Bloomfield Elementary School, Boston School, New Haven School, Foster Heights Elementary School, Thomas Nelson High School
<u>Narrative:</u>	<p>The timer switch controls will be utilized to disable the operation of the vending machines during the nighttime hours at the facilities mentioned above.</p>

**Exhibit H – Project Scope of Work
Guaranteed Energy Savings Contract
Nelson County Schools**



<u>ECM:</u>	W.1, W.2 – Sewer Credits
<u>Facility:</u>	Nelson County High School
<u>Narrative:</u>	CMTA will coordinate with the water company to eliminate the sewer charges that are currently being assessed for the cooling tower makeup water and ball field irrigation.
<u>ECM:</u>	B.1 – Seal Roof Relief Hoods
<u>Facility:</u>	Nelson County High School, Cox’s Creek Elementary School
<u>Narrative:</u>	The existing unused relief hoods at each of these schools will be capped off and insulated.
<u>ECM:</u>	UR.1 – UR.6 – Utility Rate Modifications
<u>Facility:</u>	Nelson County High School, Cox’s Creek Elementary School, Bloomfield Middle School, Thomas Nelson High School, Foster Heights Elementary School, Nelson County Early Learning Center
<u>Narrative:</u>	CMTA has identified opportunities to reduce energy cost in each of these facilities by evaluating alternative utility rate options. In each of these cases, CMTA will work on behalf of the Owner to facilitate these changes with the appropriate utility company.

**Exhibit I – Project Plans and Specifications List
Guaranteed Energy Savings Contract
Nelson County Schools**



Project Plans and Specifications List:

Specifications

Nelson County Schools Energy Upgrades Project Specifications
(Volume 1, dated April 15, 2014)

Plans

Cox's Creek Elementary School HVAC Renovation
(dated April 15, 2014)

Nelson County Schools Miscellaneous Energy Upgrades
(dated April 15, 2014, addressing Nelson County High School, Bloomfield Elementary School, Old Kentucky Home Middle School, and Boston School)

**Exhibit K - Energy Savings Guarantee
Guaranteed Energy Savings Contract
Nelson County Schools**



Energy Savings Guarantee:

K.1 Guaranteed Energy Savings

CMTA guarantees the annual level of energy savings to be achieved as a result of the installation and operation of the Energy Conservation Measures and provision of services provided for in this Contract in accordance with the methods of savings measurement and verification as set forth in *K.10 - Measurement and Verification Plan*. The Energy and Cost Savings Guarantee is set forth in annual increments for the term of the Contract as specified in *Tables K.1.1 and K.1.2* and has been structured by CMTA to be sufficient to cover any and all annual payments required to be made by the Owner as set forth in *Exhibit N - Project Financing*.

Table K.1.1 - Guaranteed Energy Savings

ECM-#	Description	Calculated Energy Savings		Safety Factor	Guaranteed Energy Savings	
		Electric kWh/yr	Gas Therms/yr		Electric kWh/yr	Gas Therms/yr
H.1	HVAC System Replacement	-77,374	12,699	100%	-77,374	12,699
H.2	HVAC System Upgrades	0	25,200	50%	0	12,600
H.3	Pump Modifications	513,184	0	50%	256,592	0
P.1	Thermostatic Mixing Valve	16,258	0	50%	8,129	0
L.1	Fluorescent Fixture De-Lamping	167,748	0	50%	83,874	0
L.2	Gym Lighting	47,070	0	50%	23,535	0
L.3	Site Lighting Control	60,559	0	50%	30,280	0
L.4	LED Exterior Lighting	52,700	0	50%	26,350	0
L.5	Misc. Lighting Upgrades	25,000	0	50%	12,500	0
C.1	Controls Program Optimization	20,000	0	50%	10,000	0
C.2	Controls System Upgrade	175,500	0	50%	87,750	0
C.3	Timer Switch Controls	5,000	0	50%	2,500	0
		1,005,645	37,899		464,136	25,299

**Exhibit K - Energy Savings Guarantee
Guaranteed Energy Savings Contract
Nelson County Schools**



Table K.1.2 - Year 1 Energy Cost Savings

ECM-#	Description	Calculated Savings		Safety Factor	Guaranteed Savings	
		Electric \$	Gas \$		Electric \$	Gas \$
H.1	HVAC System Replacement	\$ (7,660)	\$ 20,212	100%	\$ (7,660)	\$ 20,212
H.2	HVAC System Upgrades	\$ -	\$ 21,798	50%	\$ -	\$ 10,899
H.3	Pump Modifications	\$ 50,805	\$ -	50%	\$ 25,403	\$ -
P.1	Thermostatic Mixing Valve	\$ 1,610	\$ -	50%	\$ 805	\$ -
L.1	Fluorescent Fixture De-Lamping	\$ 16,607	\$ -	50%	\$ 8,304	\$ -
L.2	Gym Lighting	\$ 4,660	\$ -	50%	\$ 2,330	\$ -
L.3	Site Lighting Control	\$ 5,995	\$ -	50%	\$ 2,998	\$ -
L.4	LED Exterior Lighting	\$ 5,217	\$ -	50%	\$ 2,609	\$ -
L.5	Misc. Lighting Upgrades	\$ 2,475	\$ -	50%	\$ 1,238	\$ -
C.1	Controls Program Optimization	\$ 1,980	\$ -	50%	\$ 990	\$ -
C.2	Controls System Upgrade	\$ 17,375	\$ -	50%	\$ 8,687	\$ -
C.3	Timer Switch Controls	\$ 495	\$ -	50%	\$ 248	\$ -
UR.1	Electric Rate Modifications	\$ -	\$ -	100%	\$ -	\$ -
UR.2	Electric Rate Modifications	\$ 12,525	\$ -	100%	\$ 12,525	\$ -
UR.3	Electric Rate Modifications	\$ 8,781	\$ -	100%	\$ 8,781	\$ -
UR.4	Electric Rate Modifications	\$ 9,698	\$ -	100%	\$ 9,698	\$ -
UR.5	Electric Rate Modifications	\$ 1,566	\$ -	100%	\$ 1,566	\$ -
UR.6	Gas Rate Modifications	\$ 2,293	\$ -	100%	\$ 2,293	\$ -
Totals		\$ 134,422	\$ 42,010		\$ 80,812	\$ 31,111

K.2 Energy Usage Baseline

The energy usage baseline is established based on a 3-year average consumption analysis for each of the facilities as shown in *Exhibit L*. The Owner and Design Builder agree that the energy usage baselines represented in *Exhibit L* are accurate.

K.3 Utility Rates

The following utility rates were used as the basis of the energy cost savings calculations. These rates are based on the rate schedules identified on the utility invoices for each of the facilities.

**Exhibit K - Energy Savings Guarantee
Guaranteed Energy Savings Contract
Nelson County Schools**



Salt River Electric – Schedule B-2:

(Applies to Old Kentucky Home Middle School, Boston School, Central Office, Horizons Academy)

Energy Charge	\$0.08612 per kWh + Fuel Adjustment Charge + Environmental Surcharge + School Tax
	<hr/>
	\$0.099 per kWh Total

Salt River Electric – Schedule LLP-1:

(Applies to Nelson County High School, Cox's Creek Elementary School)

Energy Charge	\$0.06541 per kWh + Fuel Adjustment Charge + Environmental Surcharge + School Tax
	<hr/>
Demand Charge	\$6.70 per kW

Kentucky Utilities – All Electric School:

(Applies to Bloomfield Elementary School)

Energy Charge	\$0.07440 per kWh + Fuel Adjustment Charge + Environmental Surcharge + School Tax
	<hr/>
	\$0.0765 per kWh Total

Kentucky Utilities – Time of Day - Secondary:

(Applies to Bloomfield Middle School)

Energy Charge	\$0.03773 per kWh + Fuel Adjustment Charge + Environmental Surcharge + School Tax
	<hr/>
Demand Charges	\$4.55 per kW (Peak Period) \$2.95 per kW (Intermediate Period) \$3.62 per kW (Base Period)

**Exhibit K - Energy Savings Guarantee
Guaranteed Energy Savings Contract
Nelson County Schools**



Kentucky Utilities – Power Service – Secondary:

(Applies to New Haven School)

Energy Charge	\$0.03564 per kWh + Fuel Adjustment Charge + Environmental Surcharge + School Tax
Demand Charges	\$15.30 per kW (Summer) \$13.20 per kW (Winter)

City of Bardstown – Schedule E-2

(Applies to Foster Heights Elementary School, Nelson County Early Learning Center)

Energy Charge	\$0.07414 per kWh + Fuel Adjustment Charge + Environmental Surcharge + School Tax
	\$0.08744 per kWh Total

Louisville Gas & Electric

(Applies to Nelson County High School)

Natural Gas Cost	\$0.865 per Therm (3-Yr Avg Cost)
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Sureflame Propane

(Applies to Cox's Creek Elementary School, New Haven School, Bloomfield Middle School)

Propane Cost	\$1.362 per gallon (3-Yr Avg Cost)
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K.4 Energy Cost Escalation Rate

The projected annual energy escalation rate used for determining energy cost savings is 4.5%. The Owner and Design Builder agree that this is the appropriate rate.

K.5 Operational and Maintenance (O&M) Savings

The O&M savings identified in *Table K.5.1* are the result of the project scope and have been reviewed with the Owner and are agreed to and stipulated for this contract. These savings will not be further measured or verified.

**Exhibit K - Energy Savings Guarantee
Guaranteed Energy Savings Contract
Nelson County Schools**



Table K.5.1 – O&M Savings Determination

ECM-#	Description	O&M Savings	Calculation Method
H.1	HVAC System Replacement	\$ 52,833	Facility Comparison
H.2	HVAC System Upgrades	\$ 15,000	Estimate
L.1	Fluorescent Fixture De-Lamping	\$ 400	Offset Lamps Costs
L.2	Gym Lighting	\$ 500	Offset Lamps Costs
L.4	LED Exterior Lighting	\$ 100	Offset Lamps Costs
W.1	Irrigation Sewer Credits	\$ 4,000	Overpayment Calculation
W.2	Cooling Tower Sewer Credits	\$ 500	Evaporation Calculation
Totals		\$ 73,333	

K.6 Operational and Maintenance (O&M) Cost Escalation Rate

The projected annual O&M cost escalation rate used for determining O&M cost savings is 2.5%. The Owner and Design Builder agree that this is the appropriate rate.

K.7 Commencement Date

The Commencement Date shall be the first day of the month after the month in which the project has been accepted by the Owner as Final Completion and Acceptance.

The Commencement Date shall not occur and the Owner shall not be required to accept the work under this Contract unless and until all Equipment installation for the Project Site(s) is completed by CMTA in accordance with the terms and conditions of this Contract. The Owner shall have 30 days after notification by CMTA to inspect and accept the project scope. The Owner reserves the right to reject the Equipment if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. CMTA shall be paid in full, including retainage, after the punch list is completed and CMTA has satisfied any and all claims for labor and materials and the BG-4 has been signed. The project close out will not be unreasonably withheld by the Owner.

Compensation payments due to CMTA for on-going services and maintenance under this Contract as set forth in *Exhibit P - Support Services* and shall begin no earlier than 30 days from the Commencement Date as defined herein.

K.8 Owner Responsibilities

The Owner acknowledges that their involvement in this project is vital to achieve the guaranteed energy and O&M savings and agree to the following:

1. Provide CMTA with access to utility bills in a timely fashion (within 10 days of receipt from the Utility Company) for the term of the contract.

**Exhibit K - Energy Savings Guarantee
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2. Provide CMTA with clearance for remote access to the building automation system for the term of the contract.
3. Properly maintain, repair, and replace all equipment and systems with similar operating efficiencies.
4. Maintain temperature setpoints and occupancy schedules as specified in *K.11 – Standards of Comfort and Occupancy Schedules*.
5. Notify CMTA of any changes to the buildings, utilization schedules, automation system sequences, or temperature setpoints. Any changes should be sub-metered or modeled with approved software to determine impact on energy usage.
6. Provide CMTA with access to the buildings to perform evaluations and analysis of system operation.
7. Continue the Measurement and Verification program as outlined in *Exhibit P - Support Services*. Should the M&V program be suspended for any given year, the Owner relieves CMTA of the guarantee liability for that same year. The Owner has the right to renew, suspend or resume the M&V program at any point throughout the term of the 20-year guarantee period.

K.9 Annual Review and Reimbursement/Reconciliation

Energy-related cost savings shall be measured and/or calculated as specified in *K.10 - Measurement and Verification Plan* and compared to *K.2 – Energy Usage Baseline*, and a report provided within sixty (60) days of the end of the guarantee year for the previous year for each anniversary of the Commencement Date.

In the event the Energy and Cost Savings achieved during such guarantee year are less than the Guaranteed Energy and Cost Savings as defined in *Table K.1.2*, CMTA shall pay the Owner an amount equal to the deficiency.

CMTA shall remit such payments to the Owner within 30 days of the reconciliation statement that determines monies are due. When the total energy savings in any one year during the guarantee period exceed the Energy and Cost Savings Guarantee as set forth in *K.1*, such excess savings shall first be applied to reimburse CMTA for any payment CMTA made to Owner to meet CMTA's guarantee for previous years in which the energy savings fell short of CMTA's Guaranteed Savings under the terms as set in this Exhibit.

In the event the Energy and Cost Savings achieved during a guarantee year are more than the Guaranteed Energy and Cost Savings as defined in *K.1*, the surplus savings shall carry forward for future guarantee years.

K.10 Measurement and Verification Plan

The annual measurement and verification for this project will be based on the *International Performance Measurement and Verification Protocol (IPMVP)*. IPMVP provides four options for determining savings (Options A, B, C and D). These options are summarized as follows:

**Exhibit K - Energy Savings Guarantee
Guaranteed Energy Savings Contract
Nelson County Schools**



Option A – Partially Measured Retrofit Isolation: Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the energy conservation measure's (ECM) affected system(s) and/or the success of the project. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer's specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required. Typical applications may include a lighting retrofit, where the power drawn can be measured and hours of operation can be estimated. Savings that are guaranteed using this method are stipulated based on the assumptions used in the calculation methodology, and are agreed to by the Owner.

Option B - Retrofit Isolation: Savings are determined by field measurement of all key performance parameters which define the energy use of the ECM-affected system. Typical applications may include a variable frequency drive retrofit where both energy usage and hours of operation are documented.

Option C - Whole Facility Meter Comparison: Savings are determined by measuring energy use at the whole facility or sub-facility level. This approach is likely to require a regression analysis or similar to account for independent variables such as weather conditions. Typical examples may include measurement of a facility where several ECMs have been implemented, or where the ECM is expected to affect all equipment in a facility.

Option D - Calibrated Simulation: Savings are determined through simulation of the energy use of the whole facility, or of a sub-facility. Simulation routines are demonstrated to adequately model actual energy performance measured in the facility. This Option usually requires considerable skill in calibrated simulation. Typical applications may include measurement of a facility where several ECMs have been implemented, but no historical energy data is available.

The Measurement and Verification Plan utilized to reconcile the savings excess/shortfall is illustrated in *Table K.10.1* below. Refer to *Exhibit M - Savings Calculations* for assumptions and calculations.

**Exhibit K - Energy Savings Guarantee
Guaranteed Energy Savings Contract
Nelson County Schools**



Table K.10.1 – Measurement and Verification Plan

ECM-#	Description	IPMVP M&V Option
H.1	HVAC System Replacement	C
H.2	HVAC System Upgrades	C
H.3	Pump Modifications	B
P.1	Thermostatic Mixing Valve	A
L.1	Fluorescent Fixture De-Lamping	A
L.2	Gym Lighting	A
L.3	Site Lighting Control	A
L.4	LED Exterior Lighting	A
L.5	Misc. Lighting Upgrades	A
C.1	Controls Program Optimization	A
C.2	Controls System Upgrade	C
C.3	Timer Switch Controls	A
W.1	Irrigation Sewer Credits	A
W.2	Cooling Tower Sewer Credits	A
B.1	Seal Relief Hoods	NA
UR.1	Electric Rate Modifications	A
UR.2	Electric Rate Modifications	A
UR.3	Electric Rate Modifications	A
UR.4	Electric Rate Modifications	A
UR.5	Electric Rate Modifications	A
UR.6	Gas Rate Modifications	A

K.11 Standards of Comfort and Occupancy Schedules

As indicated in K.8 – Owner Responsibilities, the parameters established in this section are important to the realization of the guaranteed savings and the Owner shares the responsibility for ensuring these parameters are adhered to and enforced. CMTA will assist in the maintenance of temperature setpoints and occupancy schedules as part of the Support Services program. Spaces will be controlled to maintain temperatures and occupancy schedules as indicated in *Table K.11.1 – Occupancy Schedules and Temperature Setpoints*.

**Exhibit K - Energy Savings Guarantee
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With the exception of the cafeterias, the ventilation systems will be scheduled on M-F from 8am – 3pm.

The ventilation systems for the cafeterias will be scheduled to coincide with breakfast and lunch, and will be on M-F from 8am – 9am and from 11am – 1pm.

The buildings will be in the unoccupied mode during weekends, holidays, snow days, spring break, winter break and summer break.

Special functions, sporting events, and weekend and summer programs that coincide with an unoccupied mode will be overridden to the occupied mode by exception only.

Table K.11.1 – Occupancy Schedules and Temperature Setpoints

Space	Occupancy Schedules	Occupied Cooling Setpoint	Occupied Heating Setpoint	Unoccupied Cooling Setpoint	Unoccupied Heating Setpoint
Classrooms Media Centers Workrooms Common Areas	M-F 7am - 4pm	73°F +/- 2°F	68°F +/- 2°F	80°F	60°F
Gymnasiums	M-F 7am - 7pm	76°F +/- 2°F	68°F +/- 2°F	80°F	60°F
Kitchens	M-F 7am - 2pm	75°F +/- 2°F	68°F +/- 2°F	80°F	60°F
Cafeterias	M-F 7am - 9am M-F 11am - 1pm	73°F +/- 2°F	68°F +/- 2°F	80°F	60°F
Administration Areas	M-F 7am - 5pm	73°F +/- 2°F	68°F +/- 2°F	80°F	60°F

Exhibit L – Utility Baseline Data
Guaranteed Energy Savings Contract
Nelson County Schools



Utility Baseline Data:

The following facility utility baseline data has been validated using the utility bills provided by the Owner and represents the 3-Year average. This information will be used as the basis of comparison for the determination of energy savings in accordance with the guarantee. The Owner and Design Builder agree that this baseline is accurate.

Table L.1 – Nelson County High School

3-Yr Avg	Electric				Gas				Totals	Benchmarks	
Month	kWh	kW	mmBTU	Cost	Therms	mmBTU	Cost	mmBTU	Cost	EUI (kBtu/sf)	60.0
Jan	149,310	520	509	\$ 14,918	7,673	767	\$ 6,639.15	1,277	\$ 21,557	\$/kWh Blend	\$0.09991
Feb	173,635	581	592	\$ 17,349	6,359	636	\$ 5,502.49	1,228	\$ 22,851	\$/therm	\$0.865
Mar	161,215	557	550	\$ 16,108	4,556	456	\$ 3,942.08	1,006	\$ 20,050	Elec (kBtu/sf)	41.0
Apr	160,159	550	546	\$ 16,002	2,117	212	\$ 1,831.51	758	\$ 17,834	Gas (kBtu/sf)	19.0
May	138,861	593	474	\$ 13,874	755	75	\$ 652.98	549	\$ 14,527	Elec (\$/sf)	\$ 1.20
Jun	194,744	655	664	\$ 19,458	343	34	\$ 296.78	699	\$ 19,755	Gas (\$/sf)	\$ 0.16
Jul	196,322	640	670	\$ 19,615	453	45	\$ 391.80	715	\$ 20,007	Total (\$/sf)	\$ 1.37
Aug	224,871	666	767	\$ 22,468	610	61	\$ 527.75	828	\$ 22,996		
Sep	256,992	743	877	\$ 25,677	593	59	\$ 513.09	936	\$ 26,190		
Oct	212,882	687	726	\$ 21,270	1,143	114	\$ 988.70	841	\$ 22,259		
Nov	151,825	560	518	\$ 15,170	3,283	328	\$ 2,840.79	846	\$ 18,010		
Dec	139,354	501	475	\$ 13,923	6,289	629	\$ 5,441.68	1,104	\$ 19,365		
Totals	2,160,170	7,255	7,371	\$ 215,832	34,174	3,417	\$ 29,569	10,788	\$ 245,401		

Table L.2 – Old Kentucky Home Middle School

3-Yr Avg	Electric				Gas				Totals	Benchmarks	
Month	kWh	kW	mmBTU	Cost	Therms	mmBTU	Cost	mmBTU	Cost	EUI (kBtu/sf)	48.9
Jan	108,069	280	369	\$ 10,807	0	0	-	369	\$ 10,807	\$/kWh Blend	\$0.10000
Feb	108,427	274	370	\$ 10,843	0	0	-	370	\$ 10,843	\$/therm	-
Mar	110,497	285	377	\$ 11,050	0	0	-	377	\$ 11,050	Elec (kBtu/sf)	48.9
Apr	84,679	271	289	\$ 8,468	0	0	-	289	\$ 8,468	Gas (kBtu/sf)	-
May	135,319	286	462	\$ 13,532	0	0	-	462	\$ 13,532	Elec (\$/sf)	\$ 1.43
Jun	69,863	257	238	\$ 6,986	0	0	-	238	\$ 6,986	Gas (\$/sf)	-
Jul	100,843	311	344	\$ 10,084	0	0	-	344	\$ 10,084	Total (\$/sf)	\$ 1.43
Aug	135,837	341	463	\$ 13,584	0	0	-	463	\$ 13,584		
Sep	110,153	140	376	\$ 11,015	0	0	-	376	\$ 11,015		
Oct	90,140	123	308	\$ 9,014	0	0	-	308	\$ 9,014		
Nov	96,523	124	329	\$ 9,652	0	0	-	329	\$ 9,652		
Dec	104,359	121	356	\$ 10,436	0	0	-	356	\$ 10,436		
Totals	1,254,712	2,812	4,281	\$ 125,471	0	0	\$ -	4,281	\$ 125,471		

3-Yr Avg	Electric				Gas			Totals		Benchmarks	
Month	kWh	kW	mmBTU	Cost	Therms	mmBTU	Cost	mmBTU	Cost	EUI (kBtu/sf)	57.9
Jan	36,864	131	126	\$ 3,583	4,336	434	\$ 5,160	559	\$ 8,742	\$/kWh Blend	\$0.09718
Feb	39,168	134	134	\$ 3,806	2,156	216	\$ 2,566	349	\$ 6,373	\$/therm	\$1.19
Mar	36,864	131	126	\$ 3,583	1,266	127	\$ 1,507	252	\$ 5,089	Elec (kBtu/sf)	33.9
Apr	36,864	130	126	\$ 3,583	0	0	-	126	\$ 3,583	Gas (kBtu/sf)	24.0
May	39,744	152	136	\$ 3,862	671	67	\$ 799	203	\$ 4,661	Elec (\$/sf)	\$ 0.96
Jun	48,960	153	167	\$ 4,758	0	0	-	167	\$ 4,758	Gas (\$/sf)	\$ 0.29
Jul	44,160	136	151	\$ 4,292	554	55	\$ 660	206	\$ 4,951	Total (\$/sf)	\$ 1.25
Aug	51,840	141	177	\$ 5,038	277	28	\$ 329	205	\$ 5,367		
Sep	57,024	175	195	\$ 5,542	810	81	\$ 964	276	\$ 6,506		
Oct	51,264	167	175	\$ 4,982	0	0	-	175	\$ 4,982		
Nov	44,928	161	153	\$ 4,366	1,438	144	\$ 1,711	297	\$ 6,077		
Dec	36,864	132	126	\$ 3,583	1,191	119	\$ 1,418	245	\$ 5,000		
	kWh	kW	mmBTU	Cost	Therms	mmBTU	Cost	mmBTU	Cost		
Totals	524,544	1,742	1,790	\$ 50,976	12,699	1,270	\$ 15,112	3,060	\$ 66,088		

3-Yr Avg	Electric				Gas			Totals		Benchmarks	
Month	kWh	kW	mmBTU	Cost	Therms	mmBTU	Cost	mmBTU	Cost	EUI (kBtu/sf)	45.9
Jan	65,920	313	225	\$ 5,011	0	0	-	225	\$ 5,011	\$/kWh Blend	\$0.07602
Feb	65,600	308	224	\$ 4,987	0	0	-	224	\$ 4,987	\$/therm	-
Mar	62,800	296	214	\$ 4,774	0	0	-	214	\$ 4,774	Elec (kBtu/sf)	45.9
Apr	61,280	291	209	\$ 4,659	0	0	-	209	\$ 4,659	Gas (kBtu/sf)	-
May	51,520	266	176	\$ 3,917	0	0	-	176	\$ 3,917	Elec (\$/sf)	\$ 1.02
Jun	61,120	286	209	\$ 4,647	0	0	-	209	\$ 4,647	Gas (\$/sf)	-
Jul	54,400	285	186	\$ 4,136	0	0	-	186	\$ 4,136	Total (\$/sf)	\$ 1.02
Aug	52,240	217	178	\$ 3,971	0	0	-	178	\$ 3,971		
Sep	72,240	322	246	\$ 5,492	0	0	-	246	\$ 5,492		
Oct	78,960	332	269	\$ 6,003	0	0	-	269	\$ 6,003		
Nov	60,320	284	206	\$ 4,586	0	0	-	206	\$ 4,586		
Dec	53,040	285	181	\$ 4,032	0	0	-	181	\$ 4,032		
Totals	739,440	3,485	2,523	\$ 56,215	0	0	\$ -	2,523	\$ 56,215		

**Exhibit L – Utility Baseline Data
Guaranteed Energy Savings Contract
Nelson County Schools**



Table L.5 – Boston School

3-Yr Avg	Electric				Gas				Totals	Benchmarks	
Month	kWh	kW	mmBTU	Cost	Therms	mmBTU	Cost	mmBTU	Cost	EUI (kBtu/sf)	51.5
Jan	61,291	70	209	\$ 6,129	0	0	-	209	\$ 6,129	\$/kWh Blend	\$0.10000
Feb	73,586	88	251	\$ 7,359	0	0	-	251	\$ 7,359	\$/therm	-
Mar	65,283	79	223	\$ 6,528	0	0	-	223	\$ 6,528	Elec (kBtu/sf)	51.5
Apr	48,980	57	167	\$ 4,898	0	0	-	167	\$ 4,898	Gas (kBtu/sf)	-
May	52,647	62	180	\$ 5,265	0	0	-	180	\$ 5,265	Elec (\$/sf)	\$ 1.51
Jun	71,304	53	243	\$ 7,130	0	0	-	243	\$ 7,130	Gas (\$/sf)	-
Jul	49,003	63	167	\$ 4,900	0	0	-	167	\$ 4,900	Total (\$/sf)	\$ 1.51
Aug	98,535	142	336	\$ 9,853	0	0	-	336	\$ 9,853		
Sep	77,352	89	264	\$ 7,735	0	0	-	264	\$ 7,735		
Oct	59,807	69	204	\$ 5,981	0	0	-	204	\$ 5,981		
Nov	48,263	57	165	\$ 4,826	0	0	-	165	\$ 4,826		
Dec	60,786	66	207	\$ 6,079	0	0	-	207	\$ 6,079		
	kWh	kW	mmBTU	Cost	Therms	mmBTU	Cost	mmBTU	Cost		
Totals	766,838	894	2,616	\$ 76,684	0	0	\$ -	2,616	\$ 76,684		

Table L.6 – New Haven School

3-Yr Avg	Electric				Gas				Totals	Benchmarks	
Month	kWh	kW	mmBTU	Cost	Therms	mmBTU	Cost	mmBTU	Cost	EUI (kBtu/sf)	44.2
Jan	64,901	254	221	\$ 6,907	107	11	\$ 127	232	\$ 7,034	\$/kWh Blend	\$0.10642
Feb	64,930	246	222	\$ 6,910	0	0	-	222	\$ 6,910	\$/therm	\$1.19
Mar	60,657	226	207	\$ 6,455	0	0	-	207	\$ 6,455	Elec (kBtu/sf)	42.7
Apr	50,940	224	174	\$ 5,421	211	21	\$ 252	195	\$ 5,673	Gas (kBtu/sf)	1.5
May	47,040	216	161	\$ 5,006	0	0	-	161	\$ 5,006	Elec (\$/sf)	\$ 1.33
Jun	52,844	232	180	\$ 5,624	0	0	-	180	\$ 5,624	Gas (\$/sf)	\$ 0.02
Jul	29,533	166	101	\$ 3,143	0	0	-	101	\$ 3,143	Total (\$/sf)	\$ 1.35
Aug	45,266	231	154	\$ 4,817	182	18	\$ 217	173	\$ 5,034		
Sep	70,989	261	242	\$ 7,555	0	0	-	242	\$ 7,555		
Oct	55,849	232	191	\$ 5,943	0	0	-	191	\$ 5,943		
Nov	43,430	206	148	\$ 4,622	258	26	\$ 307	174	\$ 4,929		
Dec	53,207	213	182	\$ 5,662	0	0	-	182	\$ 5,662		
	kWh	kW	mmBTU	Cost	Therms	mmBTU	Cost	mmBTU	Cost		
Totals	639,585	2,708	2,182	\$ 68,065	759	76	\$ 903	2,258	\$ 68,968		

**Exhibit L – Utility Baseline Data
Guaranteed Energy Savings Contract
Nelson County Schools**



Table L.7 – Foster Heights Elementary School

2013	Electric				Gas				Totals	2013 Benchmarks	
Month	kWh	kW	mmBTU	Cost	Therms	mmBTU	Cost	mmBTU	Cost	EUI (kBtu/sf)	25.6
Jan	51,600	358	176	\$ 5,483	0	0	\$ -	176	\$ 5,483	\$/kWh Blend	\$0.09907
Feb	75,480	400	258	\$ 7,119	0	0	\$ -	258	\$ 7,119	\$/therm	-
Mar	64,440	394	220	\$ 6,169	0	0	\$ -	220	\$ 6,169	Elec (kBtu/sf)	25.6
Apr	41,640	342	142	\$ 4,936	0	0	\$ -	142	\$ 4,936	Gas (kBtu/sf)	-
May	57,480	282	196	\$ 5,341	0	0	\$ -	196	\$ 5,341	Elec (\$/sf)	\$ 0.74
Jun	38,880	285	133	\$ 4,597	0	0	\$ -	133	\$ 4,597	Gas (\$/sf)	-
Jul	37,560	147	128	\$ 3,345	0	0	\$ -	128	\$ 3,345	Total (\$/sf)	\$ 0.74
Aug	67,800	292	231	\$ 6,560	0	0	\$ -	231	\$ 6,560		
Sep	63,480	288	217	\$ 5,710	0	0	\$ -	217	\$ 5,710		
Oct	47,400	260	162	\$ 4,728	0	0	\$ -	162	\$ 4,728		
Nov	59,160	311	202	\$ 5,544	0	0	\$ -	202	\$ 5,544		
Dec	57,600	379	197	\$ 6,106	0	0	\$ -	197	\$ 6,106		
Totals	662,520	3,738	2,261	\$ 65,637	0	0	\$ -	2,261	\$ 65,637		

Table L.8 – Bloomfield Middle School

3-Yr Avg	Electric				Gas				Totals	Benchmarks	
Month	kWh	kW	mmBTU	Cost	Therms	mmBTU	Cost	mmBTU	Cost	EUI (kBtu/sf)	61.1
Jan	67,840	243	231	\$ 6,850	3,413	341	\$4,444	573	\$ 11,294	\$/kWh Blend	\$0.10097
Feb	63,920	227	218	\$ 6,454	1,858	186	\$2,419	404	\$ 8,873	\$/therm	\$1.30187
Mar	64,640	222	221	\$ 6,527	1,523	152	\$1,982	373	\$ 8,509	Elec (kBtu/sf)	43.0
Apr	60,160	239	205	\$ 6,074	587	59	\$764	264	\$ 6,839	Gas (kBtu/sf)	18.1
May	53,520	224	183	\$ 5,404	732	73	\$953	256	\$ 6,357	Elec (\$/sf)	\$ 1.27
Jun	66,720	258	228	\$ 6,737	0	0	-	228	\$ 6,737	Gas (\$/sf)	\$ 0.24
Jul	62,480	262	213	\$ 6,309	272	27	\$354	240	\$ 6,663	Total (\$/sf)	\$ 1.51
Aug	54,960	226	188	\$ 5,549	272	27	\$354	215	\$ 5,903		
Sep	85,920	289	293	\$ 8,676	266	27	\$347	320	\$ 9,022		
Oct	93,040	287	317	\$ 9,394	0	0	-	317	\$ 9,394		
Nov	61,200	236	209	\$ 6,179	1,714	171	\$2,232	380	\$ 8,411		
Dec	59,920	221	204	\$ 6,050	737	74	\$959	278	\$ 7,009		
Totals	794,320	2,935	2,710	\$ 80,204	11,374	1,137	\$ 14,808	3,848	\$ 95,012		

**Exhibit L – Utility Baseline Data
Guaranteed Energy Savings Contract
Nelson County Schools**



Table L.9 – Thomas Nelson High School

2013	Electric				Gas				Totals	2013 Benchmarks	
Month	kWh	kW	mmBTU	Cost	Therms	mmBTU	Cost	mmBTU	Cost	EUI (kBtu/sf)	21.8
Jan	74,640	440	255	\$ 8,734	0	0	\$ -	255	\$ 8,734	\$/kWh Blend	\$0.10806
Feb	92,640	464	316	\$ 10,614	0	0	\$ -	316	\$ 10,614	\$/therm	-
Mar	88,240	459	301	\$ 10,091	0	0	\$ -	301	\$ 10,091	Elec (kBtu/sf)	21.8
Apr	71,520	345	244	\$ 7,584	0	0	\$ -	244	\$ 7,584	Gas (kBtu/sf)	-
May	77,360	464	264	\$ 8,845	0	0	\$ -	264	\$ 8,845	Elec (\$/sf)	\$ 0.69
Jun	76,640	360	261	\$ 8,147	0	0	\$ -	261	\$ 8,147	Gas (\$/sf)	-
Jul	42,000	162	143	\$ 4,268	0	0	\$ -	143	\$ 4,268	Total (\$/sf)	\$ 0.69
Aug	68,080	246	232	\$ 6,568	0	0	\$ -	232	\$ 6,568		
Sep	100,160	435	342	\$ 10,303	0	0	\$ -	342	\$ 10,303		
Oct	85,120	407	290	\$ 8,930	0	0	\$ -	290	\$ 8,930		
Nov	79,520	376	271	\$ 8,239	0	0	\$ -	271	\$ 8,239		
Dec	80,000	413	273	\$ 8,807	0	0	\$ -	273	\$ 8,807		
Totals	935,920	4,572	3,193	\$ 101,131	0	0	\$ -	3,193	\$ 101,131		

Table L.10 – Nelson County Early Learning Center

3-Yr Avg	Electric				Gas				Totals	Benchmarks	
Month	kWh	kW	mmBTU	Cost	Therms	mmBTU	Cost	mmBTU	Cost	EUI (kBtu/sf)	45.7
Jan	22,560	101	77	\$ 2,113	0	0	-	77	\$ 2,113	\$/kWh Blend	\$0.09368
Feb	22,373	102	76	\$ 2,096	0	0	-	76	\$ 2,096	\$/therm	-
Mar	19,253	96	66	\$ 1,804	0	0	-	66	\$ 1,804	Elec (kBtu/sf)	45.7
Apr	18,240	93	62	\$ 1,709	0	0	-	62	\$ 1,709	Gas (kBtu/sf)	-
May	17,627	90	60	\$ 1,651	0	0	-	60	\$ 1,651	Elec (\$/sf)	\$ 1.25
Jun	16,400	88	56	\$ 1,536	0	0	-	56	\$ 1,536	Gas (\$/sf)	-
Jul	12,880	70	44	\$ 1,207	0	0	-	44	\$ 1,207	Total (\$/sf)	\$ 1.25
Aug	15,520	77	53	\$ 1,454	0	0	-	53	\$ 1,454		
Sep	20,640	97	70	\$ 1,934	0	0	-	70	\$ 1,934		
Oct	16,907	91	58	\$ 1,584	0	0	-	58	\$ 1,584		
Nov	15,547	90	53	\$ 1,456	0	0	-	53	\$ 1,456		
Dec	16,133	91	55	\$ 1,511	0	0	-	55	\$ 1,511		
Totals	214,080	1,087	730	\$ 20,055	0	0	\$ -	730	\$ 20,055		

Exhibit M - Savings Calculations
Guaranteed Energy Savings Contract
Nelson County Schools



Savings Calculations:

The following tables and calculations serve as documentation and representation of the methodology for determining energy and cost savings for each Energy Conservation Measure. Where energy modeling was necessary for determining savings, the Trace 700 software program was utilized. Where assumptions were made on lighting and equipment operation hours, data was collected via observation and interviewing of District personnel to determine an accurate baseline condition. The Owner and Design-Builder agree that the calculations below and the assumptions therein are accurate.

ECM – H.1 – HVAC System Replacement at Cox’s Creek Elementary School

Month	Existing Conditions		Retrofit Conditions		Savings			
	Electric	Natural Gas	Electric	Natural Gas	Electric		Natural Gas	
	kWh	Therms	kWh	Therms	kWh	\$	Therms	\$
Jan	36,864	4,336	43,312	0	-6,448	\$ (638)	4,336	\$ 6,901
Feb	39,168	2,156	45,616	0	-6,448	\$ (638)	2,156	\$ 3,432
Mar	36,864	1,266	43,312	0	-6,448	\$ (638)	1,266	\$ 2,015
Apr	36,864	0	43,312	0	-6,448	\$ (638)	0	\$ -
May	39,744	671	46,192	0	-6,448	\$ (638)	671	\$ 1,068
Jun	48,960	0	55,408	0	-6,448	\$ (638)	0	\$ -
Jul	44,160	554	50,608	0	-6,448	\$ (638)	554	\$ 882
Aug	51,840	277	58,288	0	-6,448	\$ (638)	277	\$ 440
Sep	57,024	810	63,472	0	-6,448	\$ (638)	810	\$ 1,290
Oct	51,264	0	57,712	0	-6,448	\$ (638)	0	\$ -
Nov	44,928	1,438	51,376	0	-6,448	\$ (638)	1,438	\$ 2,288
Dec	36,864	1,191	43,312	0	-6,448	\$ (638)	1,191	\$ 1,896
Totals					-77,374	\$ (7,660)	12,699	\$ 20,213

Exhibit M - Savings Calculations
Guaranteed Energy Savings Contract
Nelson County Schools



ECM – H.2 – HVAC System Upgrades at Nelson County High School

Month	Existing Conditions		Retrofit Conditions		Savings			
	Electric	Natural Gas	Electric	Natural Gas	Electric		Natural Gas	
	kWh	Therms	kWh	Therms	kWh	\$	Therms	\$
Jan	149,310	7,673	149,310	2015	0	\$ -	5,658	\$ 4,894
Feb	173,635	6,359	173,635	1670	0	\$ -	4,689	\$ 4,056
Mar	161,215	4,556	161,215	1196	0	\$ -	3,360	\$ 2,906
Apr	160,159	2,117	160,159	556	0	\$ -	1,561	\$ 1,350
May	138,861	755	138,861	198	0	\$ -	556	\$ 481
Jun	194,744	343	194,744	90	0	\$ -	253	\$ 219
Jul	196,322	453	196,322	119	0	\$ -	334	\$ 289
Aug	224,871	610	224,871	160	0	\$ -	450	\$ 389
Sep	256,992	593	256,992	156	0	\$ -	437	\$ 378
Oct	212,882	1,143	212,882	300	0	\$ -	843	\$ 729
Nov	151,825	3,283	151,825	862	0	\$ -	2,421	\$ 2,094
Dec	139,354	6,289	139,354	1652	0	\$ -	4,638	\$ 4,012
Totals					0	\$ -	25,200	\$ 21,798

Exhibit M - Savings Calculations
Guaranteed Energy Savings Contract
Nelson County Schools



Bloomfield Elementary School Geo Pumps (P-1/2)

	Existing Conditions	Retrofit Conditions
Pump Motor	31.63 bhp	14 bhp
Full Load	23.6 kW	10.5 kW
Energy Rate	\$ 0.099 per kWh	\$ 0.099 per kWh

% Load	Existing Conditions			Retrofit Conditions			Savings	
	Hours	Energy kWh/yr	Cost \$/yr	Hours	Energy kWh/yr	Cost \$/yr	Energy kWh/yr	Cost \$/yr
0%	3760	-	\$ -	3,760	0	\$ -	0	\$ -
10%	0	-	\$ -	0	0	\$ -	0	\$ -
20%	0	-	\$ -	0	0	\$ -	0	\$ -
30%	0	-	\$ -	0	0	\$ -	0	\$ -
40%	0	-	\$ -	0	0	\$ -	0	\$ -
50%	0	-	\$ -	0	0	\$ -	0	\$ -
60%	0	-	\$ -	0	0	\$ -	0	\$ -
70%	0	-	\$ -	0	0	\$ -	0	\$ -
80%	0	-	\$ -	0	0	\$ -	0	\$ -
90%	0	-	\$ -	0	0	\$ -	0	\$ -
100%	5000	118,000	\$ 11,682	5,000	52,500	\$ 5,198	65,500	\$ 6,485
Totals							65,500	\$ 6,485

Exhibit M - Savings Calculations
Guaranteed Energy Savings Contract
Nelson County Schools



Bloomfield Elementary School Building Pumps (P-3/4)

	Existing Conditions	Retrofit Conditions
Pump Motor	15.29 bhp	11.72 bhp
Full Load	11.5 kW	8.75 kW
Energy Rate	\$ 0.099 per kWh	\$ 0.099 per kWh

% Load	Existing Conditions			Retrofit Conditions			Savings	
	Hours	Energy kWh/yr	Cost \$/yr	Hours	Energy kWh/yr	Cost \$/yr	Energy kWh/yr	Cost \$/yr
0%	3760	-	\$ -	3,760	0	\$ -	0	\$ -
10%	0	-	\$ -	0	0	\$ -	0	\$ -
20%	0	-	\$ -	0	0	\$ -	0	\$ -
30%	0	-	\$ -	0	0	\$ -	0	\$ -
40%	0	-	\$ -	0	0	\$ -	0	\$ -
50%	0	-	\$ -	0	0	\$ -	0	\$ -
60%	0	-	\$ -	0	0	\$ -	0	\$ -
70%	0	-	\$ -	0	0	\$ -	0	\$ -
80%	0	-	\$ -	0	0	\$ -	0	\$ -
90%	0	-	\$ -	0	0	\$ -	0	\$ -
100%	5000	57,500	\$ 5,693	5,000	43,750	\$ 4,331	13,750	\$ 1,361
Totals							13,750	\$ 1,361

Exhibit M - Savings Calculations
Guaranteed Energy Savings Contract
Nelson County Schools



Boston Elementary School Geo Pumps (P-1/2)

	Existing Conditions	Retrofit Conditions
Pump Motor	30 bhp	30 bhp
Full Load	25 kW	25 kW
Energy Rate	\$ 0.099 per kWh	\$ 0.099 per kWh

% Load	Existing Conditions			Retrofit Conditions			Savings	
	Hours	Energy kWh/yr	Cost \$/yr	Hours	Energy kWh/yr	Cost \$/yr	Energy kWh/yr	Cost \$/yr
0%	3760	-	\$ -	3,760	0	\$ -	0	\$ -
10%	0	-	\$ -	0	0	\$ -	0	\$ -
20%	0	-	\$ -	0	0	\$ -	0	\$ -
30%	0	-	\$ -	0	0	\$ -	0	\$ -
40%	0	-	\$ -	0	0	\$ -	0	\$ -
50%	0	-	\$ -	0	0	\$ -	0	\$ -
60%	0	-	\$ -	1,000	5,400	\$ 535	(5,400)	\$ (535)
70%	0	-	\$ -	1,000	8,575	\$ 849	(8,575)	\$ (849)
80%	0	-	\$ -	1,000	12,800	\$ 1,267	(12,800)	\$ (1,267)
90%	0	-	\$ -	1,000	18,225	\$ 1,804	(18,225)	\$ (1,804)
100%	5000	125,000	\$ 12,375	1,000	25,000	\$ 2,475	100,000	\$ 9,900
Totals							55,000	\$ 5,445

Exhibit M - Savings Calculations
Guaranteed Energy Savings Contract
Nelson County Schools



Boston Elementary School Building Pumps (P-3/4)

	Existing Conditions	Retrofit Conditions
Pump Motor	13.9 bhp	13.9 bhp
Full Load	10.38 kW	10.38 kW
Energy Rate	\$ 0.099 per kWh	\$ 0.099 per kWh

% Load	Existing Conditions			Retrofit Conditions			Savings	
	Hours	Energy kWh/yr	Cost \$/yr	Hours	Energy kWh/yr	Cost \$/yr	Energy kWh/yr	Cost \$/yr
0%	3760	-	\$ -	3,760	0	\$ -	0	\$ -
10%	0	-	\$ -	0	0	\$ -	0	\$ -
20%	0	-	\$ -	0	0	\$ -	0	\$ -
30%	0	-	\$ -	0	0	\$ -	0	\$ -
40%	0	-	\$ -	0	0	\$ -	0	\$ -
50%	0	-	\$ -	0	0	\$ -	0	\$ -
60%	0	-	\$ -	1,000	2,242	\$ 222	(2,242)	\$ (222)
70%	0	-	\$ -	1,000	3,560	\$ 352	(3,560)	\$ (352)
80%	0	-	\$ -	1,000	5,315	\$ 526	(5,315)	\$ (526)
90%	0	-	\$ -	1,000	7,567	\$ 749	(7,567)	\$ (749)
100%	5000	51,900	\$ 5,138	1,000	10,380	\$ 1,028	41,520	\$ 4,110
Totals							22,836	\$ 2,261

Exhibit M - Savings Calculations
Guaranteed Energy Savings Contract
Nelson County Schools



Old Kentucky Home Middle School Geo Pumps (P-1/2)

	Existing Conditions	Retrofit Conditions
Pump Motor	56.49 bhp	27.56 bhp
Full Load	42.2 kW	20.6 kW
Energy Rate	\$ 0.099 per kWh	\$ 0.099 per kWh

% Load	Existing Conditions			Retrofit Conditions			Savings	
	Hours	Energy kWh/yr	Cost \$/yr	Hours	Energy kWh/yr	Cost \$/yr	Energy kWh/yr	Cost \$/yr
0%	3760	-	\$ -	3,760	0	\$ -	0	\$ -
10%	0	-	\$ -	0	0	\$ -	0	\$ -
20%	0	-	\$ -	0	0	\$ -	0	\$ -
30%	0	-	\$ -	0	0	\$ -	0	\$ -
40%	0	-	\$ -	0	0	\$ -	0	\$ -
50%	0	-	\$ -	0	0	\$ -	0	\$ -
60%	0	-	\$ -	0	0	\$ -	0	\$ -
70%	0	-	\$ -	0	0	\$ -	0	\$ -
80%	0	-	\$ -	0	0	\$ -	0	\$ -
90%	0	-	\$ -	0	0	\$ -	0	\$ -
100%	4000	168,800	\$ 16,650	4,000	82,400	\$ 8,128	86,400	\$ 8,522
Totals							86,400	\$ 8,522

Exhibit M - Savings Calculations
Guaranteed Energy Savings Contract
Nelson County Schools



Old Kentucky Home Middle School Building Pumps (P-3/4)

	Existing Conditions	Retrofit Conditions
Pump Motor	39.07 bhp	26.95 bhp
Full Load	29.19 kW	20.13 kW
Energy Rate	\$ 0.099 per kWh	\$ 0.099 per kWh

% Load	Existing Conditions			Retrofit Conditions			Savings	
	Hours	Energy kWh/yr	Cost \$/yr	Hours	Energy kWh/yr	Cost \$/yr	Energy kWh/yr	Cost \$/yr
0%	3760	-	\$ -	3,760	0	\$ -	0	\$ -
10%	0	-	\$ -	0	0	\$ -	0	\$ -
20%	0	-	\$ -	0	0	\$ -	0	\$ -
30%	0	-	\$ -	0	0	\$ -	0	\$ -
40%	0	-	\$ -	0	0	\$ -	0	\$ -
50%	0	-	\$ -	0	0	\$ -	0	\$ -
60%	0	-	\$ -	0	0	\$ -	0	\$ -
70%	0	-	\$ -	0	0	\$ -	0	\$ -
80%	0	-	\$ -	0	0	\$ -	0	\$ -
90%	0	-	\$ -	0	0	\$ -	0	\$ -
100%	5000	145,950	\$14,397	5,000	100,650	\$ 9,928	45,300	\$ 4,468
Totals							45,300	\$ 4,468

Exhibit N - Project Financing
Guaranteed Energy Savings Contract
Nelson County Schools



Project Financing:

The Guaranteed Energy Savings Project is funded fully by energy and operational General Fund savings. No Restricted Funds are required for the financing of this project. The sale of the energy bonds for this project will be administered by the District's fiscal agent, Ross-Sinclair and Associates. The following illustrates the financing plan.

Nelson County Schools								
Proposed Project Financial Pro-Forma								
Cost Inputs				Savings Inputs				
Project Cost	\$	3,319,010		Year 1 Guaranteed Energy Savings (GES)	\$	111,923		
Bond Issuance Cost	\$	105,990		Year 1 O&M Savings	\$	73,333		
Total Bond Issue	\$	3,425,000		Annual Energy Escalation Rate		4.50%		
Interest Rate		3.80%		Annual O&M Rate Escalation		2.50%		
Financing Term (Years)		20		Restricted Funds Requirement	\$	-		
Year 2 Additional Maintenance/M&V	\$	5,000		Funding Ratio (GES:Restricted Funds)		NA		
Year	Bond Payment	M&V	Total Cost	Energy Savings	O&M Savings	Total Savings	Yearly Cashflow	Cumulative Cashflow
2015	\$ 181,258	\$ -	\$ 181,258	\$ 111,923	\$ 73,333	\$ 185,256	\$ 3,999	\$ 3,999
2016	\$ 185,478	\$ 5,000	\$ 190,478	\$ 116,960	\$ 75,166	\$ 192,126	\$ 1,648	\$ 5,647
2017	\$ 189,633	\$ 5,125	\$ 194,758	\$ 122,223	\$ 77,045	\$ 199,268	\$ 4,511	\$ 10,158
2018	\$ 198,723	\$ 5,253	\$ 203,976	\$ 127,723	\$ 78,972	\$ 206,694	\$ 2,719	\$ 12,876
2019	\$ 207,683	\$ 5,384	\$ 213,067	\$ 133,470	\$ 80,946	\$ 214,416	\$ 1,349	\$ 14,226
2020	\$ 215,253	\$ 5,519	\$ 220,772	\$ 139,476	\$ 82,970	\$ 222,446	\$ 1,674	\$ 15,900
2021	\$ 222,553	\$ 5,657	\$ 228,210	\$ 145,753	\$ 85,044	\$ 230,797	\$ 2,587	\$ 18,487
2022	\$ 229,583	\$ 5,798	\$ 235,381	\$ 152,312	\$ 87,170	\$ 239,482	\$ 4,101	\$ 22,588
2023	\$ 241,343	\$ 5,943	\$ 247,286	\$ 159,166	\$ 89,349	\$ 248,515	\$ 1,229	\$ 23,817
2024	\$ 247,698	\$ 6,092	\$ 253,790	\$ 166,328	\$ 91,583	\$ 257,911	\$ 4,122	\$ 27,938
2025	\$ 258,783	\$ 6,244	\$ 265,027	\$ 173,813	\$ 93,872	\$ 267,685	\$ 2,659	\$ 30,597
2026	\$ 268,103	\$ 6,400	\$ 274,503	\$ 181,635	\$ 96,219	\$ 277,854	\$ 3,351	\$ 33,948
2027	\$ 276,890	\$ 6,560	\$ 283,450	\$ 189,808	\$ 98,625	\$ 288,433	\$ 4,982	\$ 38,930
2028	\$ 290,145	\$ 6,724	\$ 296,869	\$ 198,350	\$ 101,090	\$ 299,440	\$ 2,570	\$ 41,501
2029	\$ 302,690	\$ 6,893	\$ 309,583	\$ 207,275	\$ 103,618	\$ 310,893	\$ 1,310	\$ 42,811
2030	\$ 314,525	\$ 7,065	\$ 321,590	\$ 216,603	\$ 106,208	\$ 322,811	\$ 1,221	\$ 44,032
2031	\$ 323,775	\$ 7,241	\$ 331,016	\$ 226,350	\$ 108,863	\$ 335,213	\$ 4,196	\$ 48,228
2032	\$ 337,165	\$ 7,423	\$ 344,588	\$ 236,535	\$ 111,585	\$ 348,120	\$ 3,533	\$ 51,761
2033	\$ 349,480	\$ 7,608	\$ 357,088	\$ 247,180	\$ 114,374	\$ 361,554	\$ 4,466	\$ 56,227
2034	\$ 365,400	\$ 7,798	\$ 373,198	\$ 258,303	\$ 117,234	\$ 375,536	\$ 2,338	\$ 58,565
Total	\$ 5,206,155	\$ 119,730	\$ 5,325,885	\$ 3,511,184	\$ 1,873,266	\$ 5,384,450	\$ 58,565	\$ 58,565

**Exhibit O – Non-Collusion Affidavit
Guaranteed Energy Savings Contract
Nelson County Schools**



Non-Collusion Affidavit:

The following Non-Collusion Affidavit has been signed and delivered to the Kentucky Department of Education for their records.

The undersigned agent, being duly sworn, states that neither he nor his company has any relationship (financial or through kinship) to:

☒

Any school board member or the superintendent;

☒

Any or all prime contractors or material suppliers when using the construction management method of construction.

The undersigned agent further states that he has not entered into any agreement or collusion with any person relative to the price bid by anyone nor has he attempted to induce anyone to refrain from bidding.

Explain below any kinship or financial relationship that exists between the agent or the agent's company and any of the parties listed above:

Architect or Engineer

Design Builder

Or

CMTA, Inc. _____ Principal-in-Charge
Name of Company Title

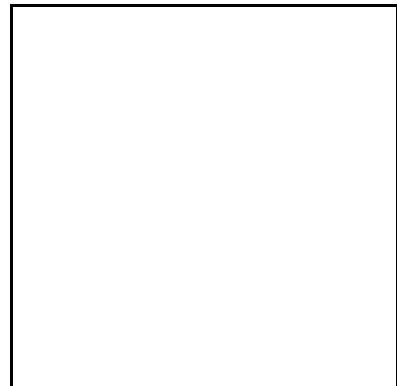
CMTA, Inc. _____ Principal-in-Charge
Name of Company Title

Subscribed and Sworn to Me this

_____ day of
_____, 20_____.

Notary Public _____

My Commission expires _____, 20_____.



Notary Seal

**Exhibit P - Support Services Agreement
Guaranteed Energy Savings Contract
Nelson County Schools**



Support Services Agreement:

In coordination with *Exhibit K- Energy Savings Guarantee*, CMTA Energy Solutions will perform the Measurement and Verification (M&V) offerings stated below and outlined in detail in *Exhibit K* each year of the contract life.

1. CMTA Energy Solutions will provide quarterly site visits to verify system operation and building performance.
2. CMTA Energy Solutions will review monthly utility bills for all schools affected by project.
3. CMTA Energy Solutions will have access to the building automation system for all schools to continually review system operation. An engineer will review system operation at least monthly and more often as necessitated by the building energy performance.
4. CMTA Energy Solutions will provide an annual reconciliation report to Nelson County Schools outlining the performance of the energy conservation measures for the last year.
5. The cost of this M&V Service is included in the project cash flow, but not in the bond sale. Therefore, this fee will be billed annually for years 2 through 20. The cost will be escalated 2.5% per year as seen in the below table.

Year	M&V
2014	\$ -
2015	\$ 5,000
2016	\$ 5,125
2017	\$ 5,253
2018	\$ 5,384
2019	\$ 5,519
2020	\$ 5,657
2021	\$ 5,798
2022	\$ 5,943
2023	\$ 6,092
2024	\$ 6,244
2025	\$ 6,400
2026	\$ 6,560
2027	\$ 6,724
2028	\$ 6,893
2029	\$ 7,065
2030	\$ 7,241
2031	\$ 7,423
2032	\$ 7,608
2033	\$ 7,798

**Exhibit Q - Warranty and Title
Guaranteed Energy Savings Contract
Nelson County Schools**



Warranty:

Design Builder hereby warrants to Owner that all materials furnished by Design Builder, if any, and all workmanship performed by Design Builder in connection with the project, shall be in accordance with the general industry standards of the mechanical and electrical construction industry; shall be performed in a competent, good and workmanlike manner and in compliance with the Contract Documents, and all pertinent laws, rules and regulations; and shall be free from any and all defective materials or workmanship. Design Builder shall promptly remedy any and all defective materials or workmanship furnished by the Design Builder or any Sub-contractor upon receipt of written notice thereof from Owner. If required by Owner, Design Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment used in connection with the Project.

The warranty set forth herein shall continue to be effective for a period of one (1) year following Owner's acceptance or beneficial use of each Energy Conservation Measure, acceptance of a particular Facility, or acceptance of the Project, whichever comes first. Owner shall give Design Builder written notice of all defective work, specifically detailing the deficiencies to be corrected, and Design Builder shall repair or otherwise remedy such defective work in an expeditious manner.

To the extent possible, Design Builder shall assign to Owner all warranties that Design Builder receives from its vendors and/or Sub-contractors for any materials or equipment, which are or are to become permanent features of the Project, which shall be in addition to the other warranties provided herein.

Title and Risk of Loss:

Risk of Loss for all equipment and materials provided by Design Builder or and Sub-contractor shall transfer to Owner upon installation and acceptance of such equipment and materials to Owner's Facilities. Title to an Energy Conservation Measure shall vest with the Owner upon installation, acceptance, and approving payment to the Design Builder. It is the intent of all parties that any transfer of title to Owner pursuant to this contract shall occur automatically without necessity of any bill of sale, certificate of title, or other instrument of conveyance beyond the partial certificate of acceptance. The Owner shall be responsible for operating and maintaining all Measures that are installed. Owner shall also be responsible for any real or personal property taxes related to the Measures.