

# **Project Manual**



## **Flooring**

### **NEWPORT HIGH SCHOOL**

900 East Sixth Street, Newport, Ky. 41071

### **NEWPORT INTERMEDIATE SCHOOL**

95 West Ninth Street, Newport, Ky. 41071

### **NEWPORT INDEPENDENT BOARD OF EDUCATION**

**Mr. Tony Watts, Superintendent**



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Flooring  
Newport High School – Newport Intermediate School

ADVERTISEMENT FOR BIDS

Sealed Bids for furnishing all materials, equipment and labor necessary to complete the Project:

**FLOORING**

**Newport High School  
900 East Sixth Street, Newport, Ky. 41071**

**Newport Intermediate School  
95 West Ninth Street, Newport, Ky. 41071**

will be received by the Owner, the Newport Independent Board of Education, at the Board Office, 30 West 8<sup>th</sup> Street, Newport, Kentucky 41071, until \_\_\_\_\_ prevailing time (according to the clock on the receptionist's phone), on \_\_\_\_\_, at which time and place all Bids will be publicly opened and read aloud.

With deposit of \$50 for each set, Bidders in good standing submitting Bids directly to the Owner may obtain two sets of the Bidding Documents beginning \_\_\_\_\_ from the office of Robert Ehmet Hayes & Associates, PLLC, Architects, 2512 Dixie Highway, Fort Mitchell, Kentucky, 41017. Checks shall be made payable to the Newport Independent Board of Education. All Sub-Bidders may view Bidding Documents at the locations listed in the Supplementary Instructions to Bidders or purchase them from ARC (513-326-2300). No Bidding Documents will be mailed or packaged for pick up.

Bidders must deposit with their Bids security in the amount, form, and subject to, the conditions provided in the Bidding Documents. Successful Bidder will be required to furnish a Performance Bond and Payment Bond in an amount of one-hundred percent (100%) of the Contract amount.

NEWPORT INDEPENDENT BOARD OF EDUCATION

By: Mr. Tony Watts, Superintendent

# Kentucky Department of Education Version of AIA® Document A701™ – 1997

## Instructions to Bidders

for the following PROJECT:  
(Name and location or address)

THE OWNER:  
(Name, legal status and address)

THE ARCHITECT:  
(Name, legal status and address)

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This version of AIA Document A701–1997 is modified by the Kentucky Department of Education. Publication of this version of AIA Document A701 does not imply the American Institute of Architects' endorsement of any modification by the Kentucky Department of Education. A comparative version of AIA Document A701–1997 showing additions and deletions by the Kentucky Department of Education is available for review on the Kentucky Department of Education Web site.

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

## **ARTICLE 1 DEFINITIONS**

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

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

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

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

§ 1.5 The Base Bid is the sum stated in the Form of Proposal for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids. The Base Bid shall include all labor, material, bonds, and the cost of all direct purchase orders for material to be purchased by the Owner

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

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

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

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

## **ARTICLE 2 BIDDER'S REPRESENTATIONS**

§ 2.1 The Bidder by making a Bid represents that:

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

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

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

1. The submission of a Bid will be construed as evidence that a site visit and examination of local conditions have been made. Later claims for labor, equipment, or materials required or difficulties encountered which could have been foreseen had such an examination been made will not be recognized.

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

## **ARTICLE 3 BIDDING DOCUMENTS**

### **§ 3.1 Copies**

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

### **§ 3.1.2 (Not Used)**

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

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

### **§ 3.2 Interpretation or Correction of Bidding Documents**

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

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

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

### **§ 3.3 Substitutions**

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

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

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

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

### **§ 3.4 Addenda**

**§ 3.4.1** Addenda will be transmitted to all who are known by the Architect and Construction Manager (if utilized) to have received a complete set of Bidding Documents.

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

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

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

## **ARTICLE 4 BIDDING PROCEDURES**

### **§ 4.1 Preparation of Bids**

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

**§ 4.1.2** All blanks on the Form of Proposal shall be legibly executed in a non-erasable medium.

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

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

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

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

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

## **§ 4.2 Bid Security**

**§ 4.2.1** Each Bid greater than \$25,000 shall be accompanied by bid security in the form of a Bond provided by a Surety Company authorized to do business in the Commonwealth of Kentucky, or in the form of a certified check, and in an amount equal to at least five percent (5%) of the Base Bid amount, pledging that the Bidder will enter into a contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payments of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty.

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

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

## **§ 4.3 Submission of Bids**

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

**§ 4.3.2** Bids shall be deposited at the designated location prior to the time and date for receipt of Bids as indicated in the Advertisement or Invitation to Bid or any extensions thereof made by Addendum. Bids received after the closing time and date for receipt and opening of Bids will be rejected and returned to the Bidder unopened.

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

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

## **§ 4.4 Modification or Withdrawal of Bid**

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

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

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

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

## **ARTICLE 5 CONSIDERATION OF BIDS**

### **§ 5.1 Opening of Bids**

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

### **§ 5.2 Rejection of Bids**

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

### **§ 5.3 Acceptance of Bid (Award) [Reference: KRS 45A.365]**

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

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

## **ARTICLE 6 POST-BID INFORMATION**

### **§ 6.1 Contractor's Qualification Statement**

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

§ 6.1.2 In determining the qualifications and responsibilities of the Bidder, the Owner shall take into consideration the Bidder's skill, experience, facility, previous work standing, financial standing, capacity and ability to handle work in addition to that in progress, and quality and efficiency of construction plant and equipment proposed to be used on the project.

### **§ 6.2 (Not Used)**

### **§ 6.3 Submittals**

§ 6.3.1 Each Bidder shall submit as part of the Form of Proposal a list of subcontractors proposed for each major branch of work itemized and described in the specifications for the Project. The Bidder's listing of a subcontractor for a work category certifies that the subcontractor has in current employment, skilled staff and necessary equipment to complete that category. The Architect and Construction Manager (if utilized) will evaluate the ability of all listed subcontractors to complete the work and notify the Owner. Listing of the Bidder as the subcontractor may invalidate the Bid should the Architect's and Construction Manager's (if utilized) review indicate the bidder does not have skilled staff and equipment to complete the work category at the time the Bid was submitted.

- .1 Changing subcontractors from those listed with the Form of Proposal is prohibited unless the bidder provides grounds for such a change that are consistent with provisions of the Instructions to Bidders. Said change shall be accompanied by a written explanation from the Bidder as well as a written release from the listed subcontractor. All letters shall be on original company stationery with original signatures from an officer in the company legally approved to act for the company. An unjustifiable change of subcontractors may invalidate the Bid. Any change to a proposed person or entity shall be addressed as noted in Section 6.3.3 of these Instructions to Bidders

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

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



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

**§ 6.4 List of Materials, Suppliers, and Manufacturers**

**§ 6.4.1** Each Bidder shall submit a complete list of materials/equipment with supplier's and manufacturer's name in the form and manner indicated on the Form of Proposal and in compliance with materials and equipment specified.

**§ 6.4.2** In addition to the list furnished with the Form of Proposal, the successful Bidder thereafter known as the Contractor, may be requested within thirty (30) calendar days after award of contract to furnish to the Architect and Construction Manager (if utilized) a more detailed and complete list of the materials and equipment, together with the manufacturer's or maker's name, brand and/or catalogue number, and product data or illustration thereof.

**§ 6.4.3** Prior to the award of contract, the Architect and Construction Manager (if utilized) will make a preliminary check of the lists included with the Form of Proposal and advise the Bidder and the Owner of the acceptance thereof, and of such other actions as may be necessary in order to meet the requirements of the contract specifications. Should it develop that any of the materials or equipment named in the list do not meet the requirements of the project specifications, the Bidder shall be required to offer to the Owner other materials or equipment in compliance with the specifications at no change in contract price. Preliminary review and acceptance of the above list shall not relieve the Contractor of furnishing equipment and materials in accordance with the specifications.

**§ 6.4.4** Written approval shall be obtained from the Architect regarding any material/equipment, supplier, and manufacturer substitution. Substitutions are permitted in the following instance:

- .1 Failure to comply with contract requirements;
- .2 Failure of the supplier or manufacturer to meet delivery schedules or other conditions of the contract;
- .3 Written release by the supplier or manufacturer.

**§ 6.4.5** The Owner reserves the right to reject the bid of any Bidder who fails to furnish the information required under Sections 6.3 and 6.4.

**§ 6.5 Unit Prices**

**§ 6.5.1** Each Bidder shall submit as part of the Bid a list of unit prices as designated on the Form of Proposal.

**§ 6.5.2** Unit prices are for changing or adjusting the scope or quantity of work from that indicated by the contract drawings and specifications.

**§ 6.5.3** Unit prices shall include all labor, materials, equipment, appliances, supplies, overhead and profit.

**§ 6.5.4** Only a single unit price per item shall be given and it shall apply for either more or less work than indicated or specified in the contract documents. In the event the contract is adjusted by unit prices, a change order shall be issued for the change and for the increased or decreased amount.

**§ 6.5.5** Unit prices listed by the Bidder and accepted by the Owner shall apply to all phases of work whether the work is performed by the Bidder or by the Bidder's (Contractor's) subcontractors.

**§ 6.5.6** For unit prices that apply to a lump sum Base Bid, the Owner reserves the right, prior to an award of contract, to negotiate, adjust and/or reject any price that is determined by the Architect, Construction Manager, or Owner to be excessive or unreasonable in amount.

**§ 6.5.7** On line item total sum bids where Bidders are quoting firm unit prices for estimated quantities of units of work, the unit price is the Bid and is not subject to change, either by the Bidder or Owner. The Owner reserves the right to correct mathematical errors in extensions and additions by the Bidder. The Owner's corrected bid sum total shall take preference over the Bidder's computed bid sum total.

**§ 6.6 Bid Division, Material Suppliers, and Purchase Orders**

**§ 6.6.1** This Section applies to projects with or without Bid Division (Multiple Prime Contracts), and those Projects that provide for direct purchase by the Owner of materials and equipment from Material Suppliers.

**§ 6.6.2** For Projects with Bid Division: General Construction and Concrete, Masonry, Plumbing, HVAC and Electrical Contractors shall provide with their Bid a breakdown of major material items (excluding sales tax). This breakdown shall include description of the item, name of the manufacturer, name of the supplier, and the amount of the supplier's quote. The Owner will issue Purchase Orders direct to the suppliers for these materials. The following shall be provided:

- .1 Within four (4) days from the Bid Date, the low Bidder shall furnish to the Owner the list of material suppliers of the items listed on the bid breakdown, with authorization given to the Contractor to quote the materials listed and that the Supplier will furnish the listed materials to the Owner under the Owner's standard Purchase Order for the amount stated on the Contractor's bid breakdown. Failure of any Contractor to provide this written list of material suppliers with authorization will cause forfeiture of the bid security.
- .2 The Contractor shall also guarantee to the Owner that materials listed in the breakdown to be purchased directly by the Owner shall comply with requirements of the Contract Documents and that the quantity of such material is sufficient to complete the Bid Division. The Performance and Payment Bonds required of the Contractor shall be in the combined amount of the materials designated in its bid to be acquired by Purchase Order by the Owner and all remaining items of cost in the respective Bid Division. Contractor shall provide an invoice from the supplier to the Owner with Contractor's Application for Payment.
- .3 Material Suppliers will be paid the full amount of their invoices. Retainage that would otherwise be withheld from invoices submitted by and paid to a material supplier shall be withheld from the approved payment request of the Contractor. Refer to General Conditions for further requirements regarding retainage.
  - a Lockers, Library, Kitchen, Shop, Technology, Science or other major equipment bid divisions shall provide with their Bid a breakout price for the material portions of the Bid (excluding sales tax). Award of contract will be based on the lump sum price of the accepted Bid that includes labor and materials. The Owner will issue a Purchase Order for the material and a contract for the labor and incidental materials. Retainage will be held on both the Purchase Order and the Contract in accordance with the General Conditions.
  - b The language of the Bid Divisions is designed to outline and define the work in general to be included in a particular Bid Division and to prevent overlapping and conflicting requirements within other Bid Divisions. No Bidder shall use the omission of any item from this language as a basis for a claim for additional cost when such item is specified or indicated to be part of a complete and workable system.
  - c It is the responsibility of the Bidder to determine which Bid Division or combination of Bid Divisions the Bidder desires to Bid.

**§ 6.6.3** For Projects without Bid Division but with direct purchase by the Owner of materials and equipment from Material Suppliers, Contractors shall comply with paragraph 6.6.2 above as applicable to the Project. The Owner will issue Purchase Orders direct to the suppliers for these materials. Award of contract will be based on the lump sum price of the accepted bid that includes labor and materials. Retainage will be held on both the Purchase Orders and the Contract(s) in accordance with the General Conditions.

## **ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND**

### **§ 7.1 Bond Requirements**

**§ 7.1.1** Unless stipulated otherwise in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Bonds shall be executed by a surety company authorized to do business in Kentucky.

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

### **§ 7.2 Time of Delivery and Form of Bonds**

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

**§ 7.2.2** Unless otherwise provided, the bonds shall be written on AIA Document A312™-2010, Performance Bond and Payment Bond — KDE Version. Both bonds shall be written in the amount of the Contract Sum, being the total of the Base Bid, as described in Section 1.5 herein, and all Alternates accepted by the Owner.

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

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

## **ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

Unless otherwise required in the Bidding Documents, the Agreement for the Work will be written on AIA Document A101™-2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum — KDE Version, except for those Projects utilizing a Construction Manager the Agreement will be written on AIA Document A132™-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Advisor Edition — KDE Version. Owner-Contractor Agreements shall be valid only after written notice by the Kentucky Department of Education that the proposed Agreements are approved.

## **ARTICLE 9 PUBLIC WORKS ACT [Reference: KRS 337.505 to 337.550]**

### **§ 9.1 Labor Regulations**

**§ 9.1.1** Work shall be performed in compliance with applicable provisions of the Kentucky Prevailing Wage Act on Public Works Projects, KRS 337.505 through KRS 337.550.

**§ 9.1.2** Prevailing wage rates, included with the Bidding Documents, shall be paid on this Project if required under Section 10.1.1. The stipulated wage rates represent prevailing minimum wage rates of pay allowable and shall not be construed to mean that higher rates may not have to be paid in order to secure labor.

**§ 9.1.3** Any Bidder and/or subcontract bidder in violation of any wage or work act provision (KRS 337.510 to KRS 337.550) and under citation by the Kentucky Department of Labor is prohibited by KRS 337.990 from bidding on or working on any and all public works contracts either in their name or in the name of any other company, firm, or other entity in which there is vested interest. No Bid shall be submitted by a prime Bidder or sub-bidder in violation of KRS Chapter 337. The responsibility of the qualifications of the sub-contract Bidder is solely that of the prime Bidder. The rejection of the subcontract Bidder and resubmittal of a qualified subcontract Bidder shall be addressed per the provisions of these Instructions to Bidders relating to subcontract Bidders (subcontractors) and materials.

### **§ 9.2 Davis-Bacon Act Provisions**

Projects funded with Federal Funds shall comply with the Davis-Bacon Act (Subchapter IV of Chapter 31 of the Title 40 of the United States Code). Where the amount received from federal revenue sharing is less than 25 percent of the estimated total construction cost of a public school project, state law and not the federal applies to the wage rate and the prevailing wage scale to be used for the project (OAG 74-329). Refer to Supplementary Conditions for direction regarding application of federal rates, if included in the bidding documents, to this project. In the event both state and federal wage rates apply, the higher of the two rates shall be used to determine labor costs.

## **ARTICLE 10 TAXES**

### **§ 10.1 Kentucky Sales and/or Use Tax [Reference KRS 139.495(1)]**

Bidders are informed that construction contracts of the Commonwealth of Kentucky and political subdivisions are not exempt from the provisions of the Kentucky Sales and/or Use Tax, unless provisions are clearly noted in the bidding documents for the direct purchase of certain materials and equipment by the Owner. Materials and equipment which are to be submitted for direct purchase are as noted by the Architect or Construction Manager in the Form of Proposal and shall be limited to forty (40) items with a minimum price of \$5,000 each. All other materials and equipment shall be included in the Contract Price and are subject to Kentucky Sales and/or Use Taxes. Current Sales and/or Use Tax shall be provided for and included in the bid amount as no adjustment will be permitted nor made after the receipt of bids.

### **§ 10.2 Federal Excise Tax**

The Commonwealth of Kentucky and its political subdivisions are exempt from Federal Excise Tax.

## **ARTICLE 11 POST BID REVIEW AND MATERIAL SUBMITTAL**

### **§ 11.1 Representative at Bid Opening**

**§ 11.1.1** Each prime Bidder shall have an authorized representative at the bid opening for submittal of the list of materials and equipment, and the post bid review which follows immediately after the opening and reading of bids.

**§ 11.1.2** Following the opening of bids, the three (3) apparent low Bidders shall remain for a post-bid review, and shall submit a completed list of materials, equipment and suppliers within one (1) hour from the close of the reading of the bids. The list of materials and equipment shall be the listing contained in the Form of Proposal.

**§ 11.1.3** The post bid review, open to all bidders, will be conducted jointly with representatives of the Architect and Construction Manager (if utilized), Owner, and apparent low Bidder. Preliminary review will be directed toward Bidder's qualifications, list of subcontractors, list of materials and equipment, and unit prices.

**ARTICLE 12 EQUAL EMPLOYMENT AND NONDISCRIMINATION**

The Commonwealth of Kentucky and its political subdivisions are committed to equal job opportunities on public contracts and prohibited from discrimination based on race, creed, color, sex, age, religion, or national origin.

**ARTICLE 13 CONFLICT OF INTEREST, GRATUITIES AND KICKBACKS, USE OF CONFIDENTIAL INFORMATION**  
**[Reference KRS 45A.455]**

Conflict of Interest, Gratuities, Kickbacks, and Use of Confidential Information as described in KRS 45A.455 are expressly prohibited. Penalties for any violation under this statute are located in KRS 45A.990.

**ARTICLE 14 KENTUCKY FAIRNESS IN CONSTRUCTION ACT OF 2007 [Reference KRS 371.400 to 371.425]**

Projects constructed for school districts in the Commonwealth of Kentucky are subject to provisions of the Kentucky Fairness in Construction Act of 2007 as it relates to the right to litigate, the right to delay damages against the Owner, the right to file a mechanic's lien, prompt payment by Owners, amount of retainage that can be withheld and other provisions of the Act.

**ARTICLE 15 KENTUCKY PREFERENCE LAW [Reference KRS 45A.490 to 45A.494]**

**§ 15.1** Projects constructed for school districts in the Commonwealth of Kentucky are subject to provisions of the reciprocal preference for Kentucky Preference for Resident Bidders law, KRS 45A.490 to KRS 45A.494. Reciprocal preference shall be given by public agencies to resident bidders.

**§ 15.2** The Kentucky Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders, to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this Section shall be given.

**§ 15.3** The reciprocal preference as described in KRS 45A.490 to KRS 45A.494 above shall be applied in accordance with Kentucky Administrative Regulation 200 KAR 5:400.

## SUPPLEMENTARY INSTRUCTIONS TO BIDDERS

The following supplements modify the KDE Version of Instructions to Bidders AIA A701, 1997. Where a portion of this document is modified or deleted by these Supplementary Instructions to Bidders, the unaltered provisions shall remain in effect.

### ARTICLE 2 -- BIDDER'S REPRESENTATIONS

- 2.1.1 Page 2, Article 2 Bidder's Representation, 2.1.1: Add: Bidder is advised to pay attention to various project requirements such as daily cleaning and protection, project meetings and minutes, full time superintendents, daily logs, change order proposal markup and timing, pre-construction conference, preinstallation conferences, construction schedule, reduction in retainage, punchlist completion, closeout process, etc.

Add: Bidder is directed to the Bidding and Contract Documents for notices regarding equal employment opportunity, affirmative action, model procurement, non-discrimination, conflict of interest, and other related provisions of the Contract.

- 2.1.3 Add: Bidder shall visit the Project site and view existing conditions in detail prior to submission of Bid. Bidders may not visit site without first notifying Tim Grayson, Director of Facilities and Transportation at 859-292-3001.

### ARTICLE 3 - BIDDING DOCUMENTS

#### 3.1 COPIES

3.1.1: Add: Deposits will be returned to Non-Bidders who return Bidding Documents in good condition one (1) week prior to due date of Bids. Bidding information and documents may be viewed at:

Robert Ehmet Hayes & Associates, PLLC, Architects  
2512 Dixie Highway  
Fort Mitchell, Kentucky 41017-3094 (859-331-3121)

Dodge-McGraw Hill  
[www.construction.com/projectcenter/](http://www.construction.com/projectcenter/)

Allied Construction Industries  
3 Kovach Drive  
Lockland, Ohio 45215 (513-221-8020)

Builder's Exchange  
2399 Meadow Drive  
Louisville, Kentucky 40218-1372 (502-459-9800)

- 3.1.3: Add: Bidder is responsible for checking pages of Project Manual and Drawings against indexes of both to insure totality of his set(s). While partial sets of the Bidding Documents may be purchased, Bidder shall review a complete set to ensure that his Bid is based on all requirements of the Bidding and Contract Documents.

- 3.1.5: Add: During the bidding process the Architect may, but is not obligated to do so, issue PDF files to the Contractor. These electronic documents are for the convenience of the Bidders only. In case of discrepancy between the electronic files and the hard copies, the hard copies will prevail.

### ARTICLE 4 -- BIDDING PROCEDURES

#### 4.1 PREPARATION OF BIDS

4.1.4: Add: Bidder must list any exceptions to the Contract Documents or be barred from raising them after award of Bid.

4.1.5: Add: Absence of any entry will be assumed to indicate no price change.

4.1.8: Add: If an accepted Alternate changes the Subcontractor for a particular branch of work, Bidder shall indicate the Subcontractor for the Alternate work on the Form of Proposal.

#### 4.2 BID SECURITY

4.2.1: Add: Bid Security shall be made payable to **the Owner, the Newport Independent Board of Education**, as stipulated in the KDE Version of the Instructions to Bidders, and include Additive Alternate Bids, if any. If the Bid Security is in the form of a Bid Bond the original only shall be submitted; no copies are necessary.

#### 4.4 MODIFICATION OR WITHDRAWAL OF BID

4.4.1: Add: Stipulated time period is forty-five (45) days for Base Bid and Alternate Bids, if any.

### ARTICLE 5 -- CONSIDERATION OF BIDS

#### 5.2 REJECTION OF BIDS

Add: Each Bidder agrees to waive any claim it has or may have against the Owner, the Architect/Engineer, and their respective employees, arising out of or in connection with the administration, evaluation, recommendation, or award of any Bid.

#### 5.3 ACCEPTANCE OF BID (AWARD)

5.3.1: In Line 1, delete "lowest qualified bidder" and substitute "lowest and/or best bid as determined by the Owner in accordance with KRS 45A.490 – 45A.494 and KRS 160.303". In the second sentence add "and/or defects" after "irregularities".

5.3.2: In Line 1 after "accept", add "or reject". In Line 3, after "accepted", add "or rejected".

### ARTICLE 6 -- POST BID INFORMATION

#### 6.1 CONTRACTOR'S QUALIFICATION STATEMENT

Add: The Owner shall have the right to take such steps as it deems necessary to determine the ability of the Bidder to perform the Work in a prompt and efficient manner per the Contract Documents. The right is reserved to reject any Bid where an investigation and evaluation of the Bidder's qualifications would give reasonable belief that the Bidder could not perform prompt and efficient completion of the Work per the Contract.

#### 6.5 UNIT PRICES

6.5.3 Add: ..., installation, delivery, taxes and insurance.

### ARTICLE 7 - PERFORMANCE BOND AND PAYMENT BOND

#### 7.1 BOND REQUIREMENTS

7.1.1: Add: Bidder shall include in his Bid costs for furnishing a Performance Bond and Payment

Bond acceptable to **the Owner, the Newport Independent Board of Education**, executed by a surety company duly authorized to do business in the Commonwealth of Kentucky, with a Treasury listed A.M. Best Rating of A- or better, in an amount of one hundred percent (100%) of the Contract Amount (as it may be increased) as security for the faithful performance of the Contract and as security for the payment of all persons performing labor and furnishing materials in connection with this Contract. Premiums due for any endorsements to include terrorism shall be included in Contractor's Bid.

## 7.2 TIME OF DELIVERY AND FORM OF BONDS

7.2.2: Add: Three originally signed Performance Bonds and Payment Bonds are required.

7.2.4: Add: The agent of the surety must exhibit certificate of license showing legal right of the surety to do business within the Commonwealth of Kentucky.

## ARTICLE 9 – PUBLIC WORKS ACT

Add: Kentucky Prevailing Wages do not apply to this Project. Delete all references to prevailing wages in this Article. Other provisions of Chapter 337 still apply.

## ARTICLE 11 - POST BID REVIEW AND MATERIAL SUBMITTAL

### 11.1 REPRESENTATIVE AT BID OPENINGS

11.1.2: Change “the apparent low bidder, if requested”, to “the two apparent lowest bidders”.

Add: Faxed or emailed lists are acceptable.

## ARTICLE 12 - EQUAL EMPLOYMENT AND NON-DISCRIMINATION

### 12.1 GENERAL POLICY

Add: 12.1.2: The Newport Independent Board of Education, an Equal Employment Opportunity and Affirmative Action Employer, has adopted the Model Procurement Regulations and they shall be deemed incorporated by reference in these Bidding and Contract Documents as though fully quoted herein. In the event of any conflict between these documents and the Model Procurement Regulations, the Regulations shall govern.

Add: 12.1.3: Non-Discrimination During the performance of this Contract, the Contractor agrees as follows:

- (1) The Contractor shall not discriminate against any employee, applicant, or subcontractor because of age, color, creed, handicap condition, marital or parental status, national origin, race, sex, veteran status, or political opinion or affiliation. The Contractor shall take affirmative action to ensure that applicants are employed without regard to their age, color, creed, handicap condition, marital or parental status, national origin, race, sex, veteran status, or political opinion or affiliation. Such action shall include, although not limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places notices setting forth the provisions of the Equal Opportunity clause.
- (2) The Contractor shall in all solicitations and/or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applications shall receive consideration for employment without regard to age, color, creed, handicap condition, marital or parental status, national origin, race, sex, veteran status, or political opinion or affiliation.

- (3) The Contractor shall cause any subcontractor engaged to perform any services required by this Contract to include this Equal Opportunity clause in all solicitations, advertisements and employment practices it shall perform.

ARTICLE 13 - CONFLICT OF INTEREST, GRATUITIES AND KICKBACKS, USE OF CONFIDENTIAL INFORMATION (KRS 45A.455)

Add: "Prohibition Against Conflicts of Interest, Gratuities and Kickbacks"

Any employee or any official of the Board of Education of Newport, Kentucky, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or other things of value, as an inducement or intended inducement, in the procurement of business, or the giving of business, for or to, or from, any person, partnership, firm or corporation, offering, bidding for, or in open market seeking to make sales to the Board of Education of Newport, Kentucky shall be deemed guilty of a felony and upon conviction such person or persons shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000) or by imprisonment in the penitentiary for not less than one (1) year nor more than ten (10) years, or both so fined and imprisoned in the discretion of the jury.

Every person, firm, or corporation offering to make, or pay, or give, any rebate, percentage of contract, money or any other thing of value, as an inducement, or intended inducement, in the procurement of business, or the giving of business, to any employee or to any official of the Board of Education of Newport, Kentucky, elective or appointive, in his efforts to bid for, or offer for sale, or to seek in the open market, shall be deemed guilty of a felony and shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000) or by imprisonment in the penitentiary for not less than one (1) year nor more than ten (10) years, or both so fined and imprisoned in the discretion of the jury.

Note: It is a misdemeanor not to have this prohibition on every solicitation or contract document. The penalty is a \$5,000 fine or one (1) year imprisonment or both on conviction.

Bidder shall execute and attach to his Form of Proposal the "Conflict of Interest" certification bound into the Project Manual after the Form of Proposal.

Add: ARTICLE 16 - AFFIDAVIT OF ASSURANCES OF WORKER'S COMPENSATION AND UNEMPLOYMENT INSURANCE

- 16.1 The successful Bidder will be required by the governing building department to assure by affidavit that the Contractor and all Subcontractors employed, or that will be employed under the provisions of the Contract, will be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.

END OF SUPPLEMENTARY INSTRUCTIONS TO BIDDERS



BG No. \_\_\_\_\_ REH Project # 149-621

Date: \_\_\_\_\_ To: (Owner) Newport Independent Board of Education

Project Name: Flooring – Newport High School – Newport Intermediate School

Bid Package No. Total Project

City, County: Newport (Campbell)

Name of Contractor: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Business Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

Having carefully examined the Instructions to Bidders, Contract Agreement, General Conditions, Supplemental Conditions, Specifications, and Drawings, for the above referenced project, the undersigned bidder proposes to furnish all labor, materials, equipment, tools, supplies, and temporary devices required to complete the work in accordance with the contract documents and any addenda listed below for the price stated herein.

Addendum \_\_\_\_\_ (Insert the addendum numbers received or the word "none" if no addendum received.)

**BASE BID:** For the construction required to complete the work, in accordance with the contract documents, I/We submit the following lump sum price of:

\_\_\_\_\_ (Use Figures)

\_\_\_\_\_ (Use Words)

**ALTERNATE BIDS:** (If applicable and denoted in the Bidding Documents)

For omission from or addition to those items, services, or construction specified in Bidding Documents by alternate number, the following lump sum price will be added or deducted from the base bid.

Alternate Bid No.	Alternate Description	+ (Add to the Base Bid)	- (Deduct from the Base Bid)	No Cost Change from the Base Bid)

**A maximum of 10 Alternate Bids will be acceptable with each Base Bid. Do not add supplemental sheets for Alternate Bids to this document.**

**LIST OF PROPOSED SUBCONTRACTORS:**

List on the lines below each major branch of work and the subcontractor involved with that portion of work. If the branch of work is to be done by the Contractor, so indicate.

The listing of more than one subcontractor in a work category shall invalidate the bid.

The listing of the bidder as the subcontractor for a work category certifies that the bidder has in current employment, skilled staff and necessary equipment to complete that category. The architect/engineer will evaluate the ability of all listed subcontractors to complete the work and notify the owner. Listing of the bidder as the subcontractor may invalidate the bid should the architect's review indicate bidder does not have skilled staff and equipment to complete the work

category at the time the bid was submitted.

**A maximum of 40 subcontractors will be acceptable with each bid. Do not add supplemental sheets for subcontractors to this document.**

**The bidder shall submit the list of subcontractors with the bid.**

	<b><u>BRANCH OF WORK</u></b> (to be filled out by the Architect)	<b><u>SUBCONTRACTOR</u></b> (to be filled out by the contractor)

**LIST OF PROPOSED SUPPLIERS AND MANUFACTURERS:**

List on the lines below each major material category for this project and the suppliers and manufacturers involved with that portion of work. Listing the supplier below means the Contractor is acknowledging authorization from the Supplier to include the Supplier in this bid.

The listing of more than one supplier or manufacturer in a material category shall invalidate the bid.

**The bidder shall submit the list of suppliers and manufacturers with the bid.**

	Flooring		
	Base and Accessories		

**UNIT PRICES:**

Indicate on the lines below those unit prices to determine any adjustment to the contract price due to changes in work or extra work performed under this contract. The unit prices shall include the furnishing of all labor and materials, cost of all items, and overhead and profit for the Contractor, as well as any subcontractor involved. These unit prices shall be listed in units of work.

**A maximum of 40 unit prices will be acceptable with each bid. Do not add supplemental sheets for unit pricing to this document.**

**The bidder shall submit the list of unit prices with the Bid.**

	<b><u>WORK</u></b> (to be filled out by the Architect)	<b><u>PRICE / UNIT</u></b> (to be filled out by the Contractor)	<b><u>UNIT</u></b> (to be filled out by the Contractor)
	Flooring Demolition		
	New Flooring		
	Rubber Base		

COMPLETION OF PROJECT:

The Bidder proposes and agrees to substantially complete all Work under this Contract no later than \_\_\_\_\_. To meet this schedule Contractor may have to factor acceleration costs and overtime in his Bid.

CERTIFICATE OF CORPORATE PRINCIPAL  
(To Be Completed if Bidder is a Corporation)

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the Company named as Bidder in the within Bid, that \_\_\_\_\_, who signed this Bid on behalf of the Bidder, was then \_\_\_\_\_ of said Company, that I know his signature and his signature hereto is genuine; and that said Bid was duly signed, sealed, and attested for and on behalf of said Company by authority of its governing body and is within the scope of its powers.

By: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

Corporate Seal: \_\_\_\_\_

TIME LIMIT FOR EXECUTION OF CONTRACT DOCUMENTS:

In the event that a bidder's proposal is accepted by the Owner and such bidder should fail to execute the contract within ten (10) consecutive days from the date of notification of the awarding of the contract, the Owner, at his option, may determine that the awardee has abandoned the contract. The bidder's proposal shall then become null and void, and the bid bond or certified check which accompanied it shall be forfeited to and become the property of the Owner as liquidated damages for failure to execute the contract.

The bidder hereby agrees that failure to submit herein above all required information and/or prices can cause disqualification of this proposal.

Submitted by: \_\_\_\_\_

NAME OF CONTRACTOR / BIDDER: \_\_\_\_\_

AUTHORIZED REPRESENTATIVE'S NAME: \_\_\_\_\_  
Signature

AUTHORIZED REPRESENTATIVE'S NAME (printed): \_\_\_\_\_

AUTHORIZED REPRESENTATIVE'S TITLE: \_\_\_\_\_

**Resident Bidder (As defined in Kentucky Department of Education Amendment to Instructions to Bidders AIA A701, 1997, as amended by the Supplementary Instructions to Bidders at Article 5.3.1)**

( ) Yes ( ) No

***NOTICE: Bid security must accompany this proposal if the Base Bid price is greater than of \$100,000.***

**This form shall not be modified.**

CONFLICT OF INTEREST

It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract or subcontract, and any solicitation or proposal therefore, in which to his knowledge:

- a. he, or any member of his immediate family, has a financial interest herein; or
- b. a business or organization which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee is a party; or
- c. any other person, business, shareholder or other stockholder, or organization with whom he or any member of his immediate family is negotiating or had an arrangement concerning prospective employment is a party. Direct or indirect participation shall include, but not be limited to, involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing or in any other advisory capacity.

It is a violation of Kentucky law for any board member or employee, or a member of their immediate family, to have a pecuniary interest either directly or indirectly in an amount exceeding \$25.00 per year in any purchase of goods or services by the Board of Education or any school thereof. Violation of this provision subjects the board member or employee to forfeiture of their position and/or employment with the school system.

I hereby certify that no member of my immediate family is an employee or board member of the Newport Independent Board of Education.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

References: KRS 156.480, 0AG 80-32, Model Procurement Code 45A.455

Note: This certificate must be signed and attached to the Form of Proposal in order for Bid to be qualified.



# AIA® Document A310™ – 2010

## Bid Bond

**CONTRACTOR:**

(Name, legal status and address)

**SURETY:**

(Name, legal status and principal place of business)

**OWNER:**

(Name, legal status and address)

**BOND AMOUNT:** \$

**PROJECT:**

(Name, location or address, and Project number, if any)

Sample Documents

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Init.

Signed and sealed this    day of    ,

\_\_\_\_\_  
(Contractor as Principal)

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Witness)

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

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Witness)

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

SAMPLE

Init.

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User Notes:

(812003674)

# Kentucky Department of Education Version of AIA Document A101 – 2007

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

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

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

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

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

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

The Owner and Contractor agree as follows.



This version of AIA Document A101–2007 is modified by the Kentucky Department of Education. Publication of this version of AIA Document A101 does not imply the American Institute of Architects' endorsement of any modification by the Kentucky Department of Education. A comparative version of AIA Document A101–2007 showing additions and deletions by the Kentucky Department of Education is available for review on the Kentucky Department of Education Web site.

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

Init.

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### ARTICLE 1 THE CONTRACT DOCUMENTS

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

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

Init.

**§ 3.3** The Contractor shall achieve Substantial Completion of the entire Work not later than ( ) days from the date of commencement, or as follows:  
*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work. Either list requirements for earlier Substantial Completion here or refer to an exhibit attached to this Agreement.)*

**Portion of Work**

**Substantial Completion Date**

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

Liquidated Damages: As actual damages for delay in completion of Work are impossible to determine, the Contractor and his Surety shall be liable for and shall pay to the Owner the sum of

(\$ ), not as a penalty, but as fixed, agreed and liquidated damages for each calendar day of delay until the Contract Work is substantially completed as defined in the General Conditions of the Contract for Construction. The Owner shall have the right to deduct liquidated damages from money in hand otherwise due, or to become due, to the Contractor, or to sue and recover compensation for damages for failure to substantially complete the Work within the time stipulated herein. Said liquidated damages shall cease to accrue from the date of Substantial Completion.

**ARTICLE 4 CONTRACT SUM**

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be

(\$ ), subject to additions and deductions as provided in the Contract Documents.

*(List the base bid amount, sum of accepted alternates, total construction cost (the sum of base bid amount plus sum of accepted alternates), sum of Owner's direct Purchase Orders. The Contract Sum shall equal the sum of Total Construction Cost, less Owner direct Purchase Orders. Either list this information here or refer to an exhibit attached to this Agreement.)*

	Amount
Base Bid	\$
Sum of Accepted Alternates	\$
Total Construction Cost (the sum of base bid amount plus sum of accepted alternates)	\$
Sum of Owner's direct Purchase Orders	\$
Contract Sum (total construction cost less Owner direct Purchase Orders)	\$

Init.

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

**§ 4.3 Unit prices, if any:**

Item

Price per Unit (\$0.00)

(Identify allowance and state exclusions, if any, from the allowance price. Either list allowances here or refer to an exhibit attached to this Agreement.)

### Price

## ARTICLE 5 PAYMENTS

### § 5.1 PROGRESS PAYMENTS

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the \_\_\_\_\_ day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the \_\_\_\_\_ day of the \_\_\_\_\_ month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than \_\_\_\_\_ ( ) days after the Architect receives the Application for Payment.

State law (KRS 371.405) requires the Owner to pay undisputed Applications for Payment within forty-five (45) business days following receipt of the invoices. If the Owner fails to pay the Contractor within forty-five (45) business days following receipt of an undisputed Application for Payment, state law requires the Owner shall pay interest to the Contractor beginning on the forty-sixth business day after receipt of the Application for Payment, computed at the rate required by state law.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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

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

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

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

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
(Section 9.8.5 of AIA Document A201-2007 — KDE Version requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)

Init.

- 2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007 — KDE Version.

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

*When Owner direct Purchase Orders are used, retainage that would otherwise be held on materials and equipment shall transfer to the Contractor, and the material suppliers will be paid the full amount of their invoices. The Owner shall retain ten percent (10%) from each Application for Payment, and an amount equal to ten percent (10%) of approved Purchase Order payments, up to fifty percent (50%) completion of the Work, then provided the Work is on schedule and satisfactory, and upon written request of the Contractor together with consent of surety and the recommendation of the Architect, the Owner shall approve a reduction in Retainage to five percent (5%) of the current Contract Sum plus Purchase Orders. No part of the five percent (5%) retainage shall be paid until after Substantial Completion of the Work, as defined in the General Conditions of the Contract for Construction. After Substantial Completion, if reasons for reduction in retainage are certified in writing by the Architect, a reduction to a lump sum amount less than the five percent (5%) retainage may be approved by the Owner when deemed reasonable. The minimum lump sum retainage shall be twice the estimated cost to correct deficient or incomplete work.*

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

**§ 5.2 FINAL PAYMENT**

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

- 1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007 — KDE Version, and to satisfy other requirements, if any, which extend beyond final payment;
- 2 a final Certificate for Payment has been issued by the Architect; and
- 3 the Contractor provides the Owner with affidavits that all payrolls, bills for materials, supplies and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, and with Consent of Surety for final payment.

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 INITIAL DECISION MAKER**

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 — KDE Version, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

## § 6.2 BINDING DISPUTE RESOLUTION

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

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

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007 — KDE Version
- ☐ Litigation in a court of competent jurisdiction where the Project is located
- ☐ Other: *(Specify)*

## ARTICLE 7 TERMINATION OR SUSPENSION

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

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

## ARTICLE 8 MISCELLANEOUS PROVISIONS

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

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at such rate required by state law, or in the absence of law, at the legal rate prevailing at the time and place where the Project is located.  
*(Insert rate of interest agreed upon, if any.)*

§ 8.3 The Owner's representative:  
*(Name, address and other information)*

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

Init.

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

§ 8.6 Other provisions:

#### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

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

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

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

§ 9.1.3 The Supplementary and other Conditions of the Contract:

*(Either list Supplementary and other Conditions of the Contract here or refer to an exhibit attached to this Agreement.)*

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

§ 9.1.4 The Specifications:

*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

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

Init.

**§ 9.1.5 The Drawings:**

*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

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

**§ 9.1.6 The Addenda, if any:**

*(Either list the Addenda here or refer to an exhibit attached to this Agreement.)*

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

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

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

- 1 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following
- 2 Other documents, if any, listed below:

Init.



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

- A. AIA Document A701–1997, Instructions to Bidders — KDE Version
- B. Contractor’s Form of Proposal
- C. KDE Purchase Order Summary Form

#### ARTICLE 10 INSURANCE AND BONDS

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

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007 – KDE Version. Either list insurance and bond information here or refer to an exhibit attached to this Agreement.)*

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

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

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

Init.

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# Kentucky Department of Education Version of AIA Document A312™ – 2010

## Performance Bond

**CONTRACTOR:**

(Name, legal status and address)

**SURETY:**

(Name, legal status and principal place  
of business)

**OWNER:**

(Name, legal status and address)

**CONSTRUCTION CONTRACT**

Date:

Amount:

Description:

(Name and location)

**BOND**

Date:

(Not earlier than Construction Contract Date)

Amount:

Modifications to this Bond: ☐ None ☐ See Section 16

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_  
(Corporate Seal)

**SURETY**

Company: \_\_\_\_\_  
(Corporate Seal)

Signature: \_\_\_\_\_

Name

and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature: \_\_\_\_\_

Name

and Title:

(FOR INFORMATION ONLY — Name, address and telephone)

**AGENT or BROKER:**

**OWNER'S REPRESENTATIVE:**

(Architect, Engineer or other party:)



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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312–2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

**§ 1** The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

**§ 2** If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

**§ 3** If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

**§ 4** Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

**§ 5** When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

**§ 5.1** Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

**§ 5.2** Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

**§ 5.3** Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

**§ 5.4** Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

**§ 6** If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

**§ 7** If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

**§ 8** If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

**§ 9** The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

**§ 10** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 11** Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**§ 12** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

**§ 13** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**§ 14 Definitions**

**§ 14.1 Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

**§ 14.2 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

**§ 14.3 Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

**§ 14.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**§ 14.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

**§ 15** If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

**§ 16** Modifications to this bond are as follows:

**§ 16.1** Surety Company shall be licensed to conduct business in the Commonwealth of Kentucky.

**§ 16.2** Insurance Agency and Agents issuing bond shall be registered and licensed to conduct business in the Commonwealth of Kentucky with the appropriate Power of Attorney included.

**§ 16.3** Bond shall comply with all statutory requirements of the Commonwealth of Kentucky including the Kentucky Unemployment Insurance Law.

**§ 16.4** No suit, action or proceeding by reason or any default whatever shall be brought on this bond after two (2) years from the date on which final payment of the contract fall due and provided further that if any alterations or additions which may be made under the contract or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the contract or any other forbearance on the part of either the Owner or the Principal shall not, in any way, release the Principal and Surety, or either of them, their heirs, executors, administrators, successors, or assigns for their liability hereunder. Notice to the Surety of any such alterations, extensions, or forbearance being expressly waived.

This obligation shall remain in force and effect until the performance of all covenants, terms and conditions herein stipulated and after such performance, it shall become null and void.

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company:

*(Corporate Seal)*

**SURETY**

Company:

*(Corporate Seal)*

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address \_\_\_\_\_

# Kentucky Department of Education Version of AIA Document A312™ – 2010

## Payment Bond

**CONTRACTOR:**

(Name, legal status and address)

**SURETY:**

(Name, legal status and principal place  
of business)

**OWNER:**

(Name, legal status and address)

**CONSTRUCTION CONTRACT**

Date:

Amount:

Description:

(Name and location)

**BOND**

Date:

(Not earlier than Construction Contract Date)

Amount:

Modifications to this Bond: ☐ None ☐ See Section 18

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_  
(Corporate Seal)

**SURETY**

Company: \_\_\_\_\_  
(Corporate Seal)

Signature: \_\_\_\_\_

Name

and Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature: \_\_\_\_\_

Name

and Title:

(FOR INFORMATION ONLY — Name, address and telephone)

**AGENT or BROKER:**

**OWNER'S REPRESENTATIVE:**

(Architect, Engineer or other party:)



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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312–2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

**§ 1** The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

**§ 2** If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

**§ 3** If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

**§ 4** When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

**§ 5** The Surety's obligations to a Claimant under this Bond shall arise after the following:

**§ 5.1** Claimants, who do not have a direct contract with the Contractor,

- .1** have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2** have sent a Claim to the Surety (at the address described in Section 13).

**§ 5.2** Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

**§ 6** If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

**§ 7** When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

**§ 7.1** Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

**§ 7.2** Pay or arrange for payment of any undisputed amounts.

**§ 7.3** The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

**§ 8** The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

**§ 9** Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

**§ 10** The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any

Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

**§ 11** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 12** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**§ 13** Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

**§ 14** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**§ 15** Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

**§ 16 Definitions**

**§ 16.1 Claim.** A written statement by the Claimant including at a minimum

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

**§ 16.2 Claimant.** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

**§ 16.3 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

**§ 16.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**§ 16.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.



§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

§ 18.1 Surety Company shall be licensed to conduct business in the Commonwealth of Kentucky.

§ 18.2 Insurance Agency and Agents issuing bond shall be registered and licensed to conduct business in the Commonwealth of Kentucky with the appropriate Power of Attorney included.

§ 18.3 Bond shall comply with all statutory requirements of the Commonwealth of Kentucky including the Kentucky Unemployment Insurance Law.

§ 18.4 No suit, action or proceeding by reason or any default whatever shall be brought on this bond after two (2) years from the date on which final payment of the contract fall due and provided further that if any alterations or additions which may be made under the contract or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the contract or any other forbearance on the part of either the Owner or the Principal shall not, in any way, release the Principal and Surety, or either of them, their heirs, executors, administrators, successors, or assigns for their liability hereunder. Notice to the Surety of any such alterations, extensions, or forbearance being expressly waived.

This obligation shall remain in force and effect until the performance of all covenants, terms and conditions herein stipulated and after such performance, it shall become null and void.

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company:

*(Corporate Seal)*

**SURETY**

Company:

*(Corporate Seal)*

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address \_\_\_\_\_

# Kentucky Department of Education Version of AIA® Document A201™ – 2007

## General Conditions of the Contract for Construction

for the following PROJECT:  
(Name and location or address)

THE OWNER:  
(Name, legal status and address)

THE ARCHITECT:  
(Name, legal status and address)

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This version of AIA Document A201–2007 is modified by the Kentucky Department of Education. Publication of this version of AIA Document A201 does not imply the American Institute of Architects' endorsement of any modification by the Kentucky Department of Education. A comparative version of AIA Document A201–2007 showing additions and deletions by the Kentucky Department of Education is available for review on the Kentucky Department of Education Web site.

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

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

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

#### **§ 1.1.2 The Contract**

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

#### **§ 1.1.3 The Work**

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

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

#### **§ 1.1.7 Instruments of Service**

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

#### **§ 1.1.8 Initial Decision Maker**

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

### **§ 1.2 Correlation and Intent of the Contract Documents**

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

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

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

### **§ 1.3 Capitalization**

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

### **§ 1.4 Interpretation**

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

### **§ 1.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service**

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

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

### **§ 1.6 Transmission of Data in Digital Form**

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

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

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

### **§ 2.2 Information and Services Required of the Owner**

#### **§ 2.2.1 (Not Used)**

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

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

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

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

### **§ 2.3 Owner's Right to Stop the Work**

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

### **§ 2.4 Owner's Right to Carry Out the Work**

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

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 General**

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

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

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

### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

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

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for

information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

### **§ 3.3 Supervision and Construction Procedures**

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

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

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

### **§ 3.4 Labor and Materials**

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

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

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

### **§ 3.5 Warranty**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further

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

### **§ 3.6 Taxes**

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

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

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

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

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

### **§ 3.7.4 Concealed or Unknown Conditions**

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

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

### **§ 3.8 Allowances**

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



**§ 3.8.2** Unless otherwise provided in the Contract Documents,

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

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

### **§ 3.9 Superintendent**

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

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

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

### **§ 3.10 Contractor's Construction Schedules**

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

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

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

### **§ 3.11 Documents and Samples at the Site**

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

### **§ 3.12 Shop Drawings, Product Data and Samples**

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



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

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

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

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

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

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

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

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

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

concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 Use of Site**

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

### **§ 3.14 Cutting and Patching**

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

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

### **§ 3.15 Cleaning Up**

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

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

### **§ 3.16 Access to Work**

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

### **§ 3.17 Royalties, Patents and Copyrights**

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

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

## ARTICLE 4 ARCHITECT

### § 4.1 General

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

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

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

### § 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment, and, at the discretion of the Owner may be the Owner's representative during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

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

### § 4.2.4 Communications Facilitating Contract Administration

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance

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

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

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

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

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

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

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

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

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

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

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

### **§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design)

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proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

### **§ 5.3 Subcontractual Relations**

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

### **§ 5.4 Contingent Assignment of Subcontracts**

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

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

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

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

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

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

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

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

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

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

### **§ 6.2 Mutual Responsibility**

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

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

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

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

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

### **§ 6.3 Owner's Right to Clean Up**

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

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

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



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

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

**§ 7.1.4** Proposed Change in the Work equal to or exceeding \$25,000 additive or deductive, shall be subject to approval by the Kentucky Department of Education prior to execution of the Change Order by the Owner.

## **§ 7.2 Change Orders**

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

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

## **§ 7.3 Construction Change Directives**

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

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

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

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

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

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

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

**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit not to exceed fifteen (15%) of the net cost of the change. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

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

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

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

#### **§ 7.4 Minor Changes in the Work**

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

### **ARTICLE 8 TIME**

#### **§ 8.1 Definitions**

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

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

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

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

#### **§ 8.2 Progress and Completion**

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

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



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

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

### **§ 8.3 Delays and Extensions of Time**

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

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

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

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

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

### **§ 9.2 Schedule of Values**

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

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage as stipulated in Section 9.3.4.

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

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

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

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

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

**§ 9.3.4** When Owner direct Purchase Orders are used, retainage that would otherwise be held on materials and equipment shall transfer to the Contractor, and the material suppliers will be paid the full amount of their invoices. The Owner shall retain ten percent (10%) from each Application for Payment, and an amount equal to ten percent (10%) of approved Purchase Order payments, up to fifty percent (50%) completion of the Work, then provided the Work is on schedule and satisfactory, and upon written request of the Contractor together with consent of surety and the recommendation of the Architect, the Owner shall approve a reduction in Retainage to five percent (5%) of the current Contract Sum plus Purchase Orders. No part of the five percent (5%) retainage shall be paid until after Substantial Completion of the Work, as defined in Section 9.8. herein. After Substantial Completion, if reasons for reduction in retainage are certified in writing by the Architect, a reduction to a lump sum amount less than the five percent (5%) retainage may be approved by the Owner when deemed reasonable. The minimum lump sum retainage shall be twice the estimated cost to correct deficient or incomplete work.

#### **§ 9.4 Certificates for Payment**

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

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

#### **§ 9.5 Decisions to Withhold Certification**

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

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

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

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

#### **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents or as required by state law, whichever is more restrictive, and shall so notify the Architect.

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

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

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

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

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

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

#### **§ 9.7 Failure of Payment**

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

#### **§ 9.8 Substantial Completion**

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

occupancy permit issued by the Kentucky Department of Housing, Building, and Construction and any other agencies that have statutory authority and approval requirements.

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

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

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

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

#### **§ 9.9 Partial Occupancy or Use**

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

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

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

#### **§ 9.10 Final Completion and Final Payment**

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

Init.

- .1 Upon receipt and approval of the final Application for Payment, for each Contract and Purchase Order, if any, the Architect will prepare, and the Architect and Owner shall complete their portion of the Kentucky Department of Education BG-4 Contract Closeout Form – 2013, and forward the board-approved BG-4 form to the Kentucky Department of Education with a copy of the final Certificate for Payment upon the Board authorizing the BG-4 form, accepting the Work, and approving final payment to the Contractor or Material Supplier.

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

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

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

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

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

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

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

### **§ 10.2 Safety of Persons and Property**

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

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

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

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

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

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

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

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

**§ 10.2.8 Injury or Damage to Person or Property**

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

**§ 10.3 Hazardous Materials**

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

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



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

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

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

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

#### **§ 10.4 Emergencies**

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

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Liability Insurance**

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

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

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Such insurance shall be no less than the following amounts:

- |                      |  |
|----------------------|--|
| (1) Public Liability | \$200,000.00 one person/maximum each person<br>\$500,000.00 one accident/maximum each person |
| (2) Property Damage  | \$200,000.00 one accident/maximum<br>\$500,000.00 aggregate                                  |

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

- |  |   |
|--|---|
| (1) Worker's Compensation:   |   |
| a. State   | Statutory   |
| b. Applicable Federal (e.g., Longshoreman's)   | Statutory   |
| c. Employer's Liability  | \$500,000   |
| (2) Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractor's Protection; Product Liability and Completed Operations; Broad Form Property Damage);  |   |
| a. General Aggregate (except Products-Completed Operations)  | \$1,000,000   |
| b. Products-Completed Operations Aggregate   | \$1,000,000   |
| c. Personal/Advertising Injury (per person/organization)   | \$1,000,000   |
| d. Each Occurrence (Bodily Injury and Property Damage)   | \$1,000,000   |
| e. Limit per Person Medical Expense  | \$10,000  |
| f. Exclusions of Property in Contractors Care, Custody or Control will be eliminated.  |   |
| g. Property Damage Liability Insurance will provide Coverage for Explosion, Collapse, and Underground Damage.  |   |
| (3) Contractual Liability:   |   |
| a. General Aggregate   | \$1,000,000   |
| b. Each Occurrence (Bodily Injury and Property Damage)   | \$1,000,000   |
| (4) Automobile Liability:  |   |
| a. Bodily Injury   | \$500,000 Each Person<br>\$1,000,000 Each Accident                    |
| b. Property Damage   | \$500,000 Each Accident, or<br>a combined single limit of \$1,000,000 |
| (5) Liability coverage for the Owner, the Architect, the Architect's Consultants and others listed in the Supplementary Conditions will be provided (subject to customary exclusions for professional liability), by endorsement as additional insured's on the Contractor's Liability Policy. |   |
| (6) Excess Liability Umbrella Form:  |   |
| a. General Aggregate   | \$1,000,000   |
| b. Each Occurrence   | \$1,000,000   |

**§ 11.1.2.2** There shall be an endorsement in each of the above policies reading as follows: "It is hereby agreed that in the event of a claim arising under this policy, the company may not deny liability be reason of the insured being a state, county, municipal corporation or governmental agency."



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

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

**§ 11.2 Owner's Liability Insurance**

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

**§ 11.3 Property Insurance**

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

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

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

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

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

**§ 11.3.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or

companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

#### **§ 11.3.2 Boiler and Machinery Insurance**

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

#### **§ 11.3.3 Loss of Use Insurance**

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

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

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

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

**§ 11.3.7** Before an exposure to loss may occur, the Owner shall provide the Architect and the Kentucky Department of Education with certificates of insurance coverage required by this Section 11.3.

#### **§ 11.3.7 Waivers of Subrogation**

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

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

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

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

#### **§ 11.4 Performance Bond and Payment Bond**

**§ 11.4.1** Unless otherwise provided, when the Contract Sum exceeds twenty-five thousand dollars (\$25,000) the Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. A surety company authorized to do business in Kentucky shall execute bonds, and the cost thereof shall be included in the Contract Sum. Unless otherwise provided, the amount of each bond shall be equal to 100% of the Contract Sum plus Purchase Orders, or 100% of the Lump Sum Base Bid plus or minus accepted Alternates, whichever is greater.

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

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 Uncovering of Work**

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

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

#### **§ 12.2 Correction of Work**

##### **§ 12.2.1 Before or After Substantial Completion**

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

##### **§ 12.2.2 After Substantial Completion**

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

Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

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

#### **§ 12.3 Acceptance of Nonconforming Work**

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

### **ARTICLE 13 MISCELLANEOUS PROVISIONS**

#### **§ 13.1 Governing Law**

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

**§ 13.1.1** None of the Contract Documents for this project shall be construed against the party preparing documents on the grounds that the party prepared or drafted the document, or any portion thereof.

#### **§ 13.2 Successors and Assigns**

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

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

#### **§ 13.3 Written Notice**

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

### **§ 13.4 Rights and Remedies**

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

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

### **§ 13.5 Tests and Inspections**

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

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

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

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

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

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

### **§ 13.6 Interest**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as required by state law, or in the absence of law, at the legal rate prevailing at the time and place where the Project is located.

### **§ 13.7 Time Limits on Claims**

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

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

### **§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any

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other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

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

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

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

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

## **§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

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

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

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

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

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case

may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### **§ 14.3 Suspension by the Owner for Convenience**

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

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

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

#### **§ 14.4 Termination by the Owner for Convenience**

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

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

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

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

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 Claims**

##### **§ 15.1.1 Definition**

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

##### **§ 15.1.2 Notice of Claims**

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

##### **§ 15.1.3 Continuing Contract Performance**

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

##### **§ 15.1.4 Claims for Additional Cost**

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



#### **§ 15.1.5 Claims for Additional Time**

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

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

#### **§ 15.1.6 Claims for Consequential Damages**

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

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

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

#### **§ 15.2 Initial Decision**

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

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

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

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

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

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

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

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

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

### **§ 15.3 Mediation**

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

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

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

### **§ 15.4 Arbitration**

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

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

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

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

**§ 15.4.4 Consolidation or Joinder**

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

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

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

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## SUPPLEMENTARY CONDITIONS

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

### ARTICLE 1 - GENERAL PROVISIONS

#### 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

1.2.1: Add: In case of conflicts or discrepancies between Drawings and Specifications or within or among the Contract Documents and not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's determination.

Add: Drawings are diagrammatic and are a graphic representation of Contract requirements, produced according to best available standards to an optimum scale. Dimensions of work as indicated on Drawings are not guaranteed to be asbuilt dimensions. No measurements shall be scaled from Drawings and used as definite dimensions for quantities, layout, or fitting work in place.

#### 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

Add: 1.6.2: Electronic digital data files of the Architect's Contract Drawings may be provided by the Architect for successful Contractor's and/or Subcontractors' use in preparing submittals. At Contractor's request, and with approval of the Architect, copies of certain CAD files will be provided to the Contractor for the Contractor's use in connection with the Project upon execution of "Conditions for Transfer of Electronic Data". Form is on file at the office of the Architect. Depending upon the scope of the request, the Architect may charge a fee or not issue digital files at all. All requests for documents not authored by the Architect must be made directly to the individual consultant.

### ARTICLE 2 - OWNER

#### 2.1 GENERAL

2.1.1: Add: The Owner is the Newport Independent Board of Education.

#### 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.5: Delete in its entirety and substitute: Contractor will be furnished free of charge three (3) sets of the Drawings and Project Manuals. Additional sets will be furnished at the cost of reproduction, postage and handling. Contractor is responsible for verifying completeness and accuracy of the sets distributed to him for construction, as they are sets which have been returned from the bidding process and have not been verified.

### ARTICLE 3 - CONTRACTOR

#### 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1: Add: Contractor shall (1) review any specified construction or installation procedure, including those recommended by manufacturers; (2) advise the Architect if the specified procedure deviates from good construction practice, if following the procedure will affect any warranties, including the Contractor's general warranty, and of any objections the Contractor may have to the procedure; and (3) propose any alternative procedure which the Contractor will warrant.

#### 3.4 LABOR AND MATERIALS

3.4.2 Add: After the Contract has been executed, the Owner and Architect will consider requests for the substitution of products in place of those specified only under the conditions set forth in Section 016000 "Product Requirements and Substitutions". By making requests for substitutions, the Contractor:

- .1 represents that it has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that it will provide the same warranty for the substitution as it would have provided for the product specified;
- .3 certifies that the cost data presented is complete and includes all related costs for the substituted product and for work that must be changed as a result of the substitution except for the Architect's redesign costs, and waives all claims for additional costs related to the substitution that subsequently become apparent; and
- .4 shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

### 3.6 TAXES

3.6.1: Add: This Project is not exempt from Kentucky State Sales Tax.

### 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

3.7.1: Add: The Owner has not paid any plan review fees for pre-bid review of this Project. Bidder shall be responsible for any fees levied by the State of Kentucky, the City of Newport, Campbell County, and/or others for this Project and shall include costs for such in his Bid. In addition, Contractor shall familiarize himself with procedures regarding departmental fees for various types of plan and shop drawing reviews during construction under the Kentucky Building Code, and shall include cost in his Bid. These shop drawing fees are separate from other fees. Contractor shall contact the local authorities and the Division of Building Codes Enforcement of the Kentucky Office of Housing, Buildings and Construction in Frankfort (502-573-0373) for any requirements.

Add: The Contractor and Subcontractors must be duly licensed to perform work in the Commonwealth of Kentucky at the time of submission of Bid. In addition, the Contractor and all Subcontractors must have Bracken County business licenses prior to beginning work on this project.

3.7.2: Add: Kentucky Fairness in Construction Act: Where the provisions of this Contract and its associated Contract Documents conflict with or are contrary to the provisions of KRS 371.400 to 371.425, the provisions of KRS 371.400 to 371.425 shall prevail.

Within 10 days after award of Contract and as required by KRS 45A.343, Section (2) (a), each Contractor and all Subcontractors performing work under the contract shall in writing to the Owner reveal any final determination of a violation by the Contractor or Subcontractor within the previous 5 year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or Subcontractor. As required by KRS 45A.343, Section (2)(b), Contractors and Subcontractors performing work under the contract shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or Subcontract for the duration of the Contract.

3.7.3: Add: All work of this project shall be performed in accordance with the prevailing Kentucky Building Code.

Contractor shall also adhere to all published and recommended procedures regarding Covid19 and require all on the job site to do likewise.

3.7.4: Claims for Concealed or Unknown Conditions: Add: Claims for concealed or unknown conditions may be limited by various Sections of the Specifications.

3.9 SUPERINTENDENT

3.9.1: Add: Contractor shall have on site for the full length of construction a full-time superintendent, full time meaning that superintendent may not be engaged on any other project during the course of this contract.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.2: First and second sentences: Change "approval" to "review".

3.11 DOCUMENTS AND SAMPLES AT THE SITE

Add: 3.11.1 During full length of construction of the Project, Contractor is required to keep on the job site, in good condition, the set of Construction Drawings and Project Manual which bear the stamp of approval of the governing building authority and the Drawings approved by the Plumbing Division of the Kentucky Office of Housing, Buildings, and Construction, if applicable. The record set to be given to the Architect for the Owner at completion of the Project shall be in good condition, as determined by the Architect.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.5: Change "approved by the Architect" to "reviewed by the Architect".

3.12.10: Add: All delegated design for engineered assemblies, etc. shall be performed by a professional engineer licensed to practice in Kentucky.

ARTICLE 7 - CHANGES IN THE WORK

7.1 GENERAL

7.1.4: Add: All proposals for changes in the Work shall show a cost breakdown which separates costs into four categories: labor, materials, profit and overhead, bond and insurance. Further detailed breakdowns may be requested. If unit prices are utilized, this cost breakdown will not be necessary. Net cost of any change is defined as outlined in 7.3.7 sub-articles .1 through .5, except for bonds and insurance.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.9: Delete in its entirety and substitute: Amounts for changes in the Work may be included in applications for payment only after Change Orders for such changes are fully executed.

ARTICLE 8 – TIME

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1: Add: If Change Orders are granted for time extensions, it is understood and agreed that they are done so upon the agreement of the Owner and Contractor that no claim will be asserted

for any alleged increasing costs, either direct, indirect, or impact costs, including, but not limited to, extended overhead, or any wage, material or other escalations associated with such time extension, and such costs are hereby expressly waived.

## ARTICLE 9 - PAYMENTS AND COMPLETION

### 9.3 APPLICATIONS FOR PAYMENT

9.3.1: ~~Delete~~ "At least ten days before the date established for each progress payment" and substitute "At least seven days before the date established by the Owner for receipt of each application for payment". Add to end of second sentence "and Consent of Surety, if requested by the Architect or Owner.

9.3.1.1: ~~Delete in its entirety and substitute:~~ Amounts for changes in the Work may be included in applications for payment only after change orders for such changes are fully executed.

9.3.2: Add: Materials stored at the site shall be protected, are not to be removed from the site, are to be properly insured, and are subject to such documentation as the Owner or Architect may require. **No monies will be paid for materials stored off site.**

9.3.4: Add: If reduction in retainer is granted, the Owner shall retain the right to reinstate the full ten percent retainage if the manner of completion of the Work and its progress do not remain satisfactory, if the required level of Project maintenance and cleanliness is not adhered to, or for other good and sufficient reasons. Reductions in retainer are subject to any documentation required by the Owner.

### 9.8 SUBSTANTIAL COMPLETION

9.8.5: ~~Delete second sentence and substitute with:~~ See KDE Amendment to General Conditions A201, Article 9.3.4 regarding retainage. Add: Any reductions in retainage requested by the Contractor will require certification of the Architect, approval of the Owner, Consent of Surety to Reduction in or Partial Release of Retainage (AIA G707A), as well as other documentation the Owner may require.

### 9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.2: Add: Form of affidavit shall be Contractor's Affidavit of Payment of Debts and Claims (AIA G706) and Affidavit/Waiver of Lien form; the Owner's form of Consent of Surety shall be Consent of Surety Company to Final Payment (AIA G707).

## ARTICLE 11 - INSURANCE AND BONDS

### Add 11.0

#### GENERAL

11.0.1 Insurance requirements are stipulated in Article 11 of the KDE Version of AIA General Conditions A201 and this Article 11 of these Supplementary Conditions.

11.0.2 The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits of any policies. If applicable, Contractor shall diligently coordinate all insurance with the Owner's on-going occupancy during construction, to the end that all required insurance is in place at all times. The Contractor hereby agrees to indemnify and hold the Owner and Architect harmless from any and all claims, demands, actions, and causes of action whatsoever, and any expenses incurred by the Owner and Architect in the defense thereof, arising out of or in any way connected with the failure of the Contractor to maintain any

insurance required of him in the Bidding and Contract Documents, including but not limited to the proper scope, amount, form, and endorsements, during the life of the Contract, or thereafter. To this end, the Contractor shall keep all insurance companies advised of any changes in the Work to assure continuous and adequate coverage.

#### 11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1.1 Add: , including private entities performing work at the site and exempt from coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project. Contractor shall relieve the Owner and the Architect from any costs due to accidents or other liabilities mentioned in Worker's/Workmen's Compensation Acts. Contractor must carry Kentucky Worker's Compensation for this Project and require all Subcontractors to do likewise.

11.1.1.2 Add: , or persons or entities excluded by statute from the requirements of Section 11.1.1.1 but required by the Contract Documents to provide the insurance required by that Section;

11.1.2, and 11.1.2.1: Modify coverages as follows: General liability aggregate coverage shall be in the amount of not less than \$2,000,000 and shall apply in total to this Project only. Additionally, excess liability umbrella form shall be provided in the amount of not less than \$5,000,000 per occurrence and aggregate.

11.1.2.1 (4): Add: "for Owner, non-Owner and hired vehicles" and covered by the required excess liability umbrella.

11.1.2.1 (5): Additional Insureds for this Project:

Owner: Newport Independent Board of Education  
Architect: Robert Ehmet Hayes & Associates, PLLC

11.1.3 Add: Supplemental Attachment for Acord Certificate of Insurance 25-S (AIA G715) is bound into this Project Manual and shall accompany Contractor's certificate of insurance and be signed by Contractor's authorized insurance agent.

#### 11.3 PROPERTY INSURANCE

11.3.1 Delete at the beginning of the first sentence "Unless otherwise provided, the Owner" and substitute "The Contractor." Add to end of last sentence: "...and Robert Ehmet Hayes & Associates, PLLC."

11.3.1.2: Delete this article in its entirety.

11.3.1.3: Substitute "Contractor" for "Owner".

11.3.4: Delete this article in its entirety.

11.3.5 Delete in its entirety.

11.3.6: In the first sentence, substitute "Contractor" for "Owner" and "Owner for "Contractor". At the end of the last sentence, substitute "Owner" for "Contractor".

11.3.7 (Waivers of Subrogation): Delete in its entirety.

11.3.8: Substitute "Contractor" for "Owner"; except that at the first reference to "Owner" in the first sentence, the word "this" should be substituted for "the Owners".



11.3.9: Substitute “Contractor” for “Owner” each time the latter word appears except in the last sentence.

11.3.10: In the third line after “manner”, add “set forth in Article 15”. Delete remainder of paragraph. Substitute “Contractor” for “Owner” each time the latter word appears.

## ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK

### 12.2 CORRECTION OF WORK

#### 12.2.2 After Substantial Completion

12.2.2.1: Add: Owner, Contractor and Architect shall participate in a review of the Project near the end of the one-year correction period of correction to review facility operations and performance, and to make appropriate recommendations on non-conforming and/or work to be corrected. Contractor shall arrange this meeting.

## ARTICLE 13 - MISCELLANEOUS PROVISIONS

### 13.5 TESTS AND INSPECTIONS

13.5.4: Add: Those certificates of inspection, testing and/or approval relative to project completion shall be secured by the Contractor and submitted to the appropriate department or agency so that the governing building authority can issue the Owner a letter of acceptance of the Project. Contractor shall be solely responsible for securing all certificates of inspection, testing and/or approval and the Certificate of Occupancy which are to be submitted to the Owner with a copy to the Architect.

## ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

### 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

Add: 14.3.3: If the Work is suspended for any cause whatsoever, the Contractor shall be responsible for the Work and shall take such precautions necessary to prevent damage to the Work and persons.

## ARTICLE 15 – CLAIMS AND DISPUTES

### 15.1 CLAIMS

#### 15.1.4 CLAIMS FOR ADDITIONAL COST

Add: No additional compensation beyond the Contract Amount will be paid because of additional costs caused by winter operations. All such winterizing costs shall be included in the Contract Sum.

#### 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

15.2 INITIAL DECISION

15.2.5 In the fifth line, delete “mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution”, and substitute “resolution by court decision”.

15.2.6 Delete this article in its entirety.

15.2.6.1 Delete this article in its entirety.

15.3 MEDIATION

Delete this Article 15.3 in its entirety.

15.4 ARBITRATION

Delete this Article 15.4 in its entirety.

END OF SUPPLEMENTARY CONDITIONS

**AIA®****Document G715™ – 1991****Supplemental Attachment** for ACORD Certificate of Insurance 25-S

PROJECT (Name and address):

Sample Documents

**INSURED****A. General Liability**

1. Does the General Aggregate apply to this Project only?
2. Does this policy include coverage for:
  - a. Premises - Operations?
  - b. Explosion, Collapse and Underground Hazards?
  - c. Personal Injury Coverage?
  - d. Products Coverage?
  - e. Completed Operations?
  - f. Contractual Coverage for the Insured's obligations in A201?
3. If coverage is written on a claims-made basis, what is the:
  - a. Retroactive Date?
  - b. Extended Reporting Date?

Yes No N/A

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**B. Worker's Compensation**

1. If the Insured is exempt from Worker's Compensation statutes, does the Insured carry the equivalent Voluntary Compensation coverage?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------	--------------------------

**C. Final Payment Information**

1. Is this certificate being furnished in connection with the Contractor's request for final payment in accordance with the requirements of Sections 9.10.2 and 11.1.3 of AIA Document A201, General Conditions of the Contract for Construction?
2. If so, and if the policy period extends beyond termination of the Contract for Construction, is Completed Operations coverage for this Project continued for the balance of the policy period?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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**D. Termination Provisions**

1. Has each policy shown on the certificate and this Supplement been endorsed to provide the holder with 30 days notice of cancellation and/or expiration? List below any policies which do not contain this notice.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------	--------------------------

**E. Other Provisions**

Authorized Representative

Date of Issue

## SECTION 011000 - SUMMARY

### PART 1 - GENERAL

#### 1.1 RELATED DOCUMENTS

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

#### 1.2 SUMMARY

- A. This Section includes the following:
  - 1. Project Information.
  - 2. Work Covered by Contract Documents.
  - 3. Owner Furnished Products.
  - 4. Owner's Occupancy Requirements.
  - 5. Work Restrictions.
  - 6. Type of Contract.
  - 7. Use of Premises.
  - 8. Existing Conditions.
  - 9. Conduct of Operations.
  - 10. Specification and Drawing Conventions.
  - 11. Construction Sequence and Completion Date.
  - 12. Phasing.

#### 1.3 PROJECT INFORMATION

- A. Project Identification:      Flooring:  
   Newport High School – New Intermediate School  
   REH #149-621
  - 1. Project Locations:    900 East 6<sup>th</sup> Street, Newport, Ky. 41071  
   95 West Ninth Street, Newport, Ky. 41071
  - 2. Owner:                    Newport Independent Board of Education  
   30 West Eighth Street Newport, Kentucky 41071
  - 3. Owner's Representative:    Mr. Tony Watts, Superintendent  
   30 West 8<sup>th</sup> Street, Newport, Kentucky 41071
- B. Architect: Robert Ehmet Hayes & Associates, PLLC, 2512 Dixie Highway, Fort Mitchell, Kentucky 41017.

#### 1.4 WORK COVERED BY CONTRACT DOCUMENTS

- A. The Work of this Project is defined by the Contract Documents and includes, but is not limited to, new flooring at Newport High School and Newport Intermediate School. See Drawings for rooms included in Project scope.
- B. See Drawings.
- C. Contractor shall comply with all governmental, regulatory, and agency requests and directives in regard to the Corona Virus and require all who are on job site to do the same. All Contractor personnel must also comply with the safety expectations of Newport Independent Schools.

1.5 OWNER FURNISHED PRODUCTS

- A. If there are any Owner furnished products indicated, the Work of this contract includes receiving, unloading, handling, storing, protecting, and installing Owner-furnished products and making building services connections.
- B. Owner will arrange for and deliver Shop Drawings, Product Data, and Samples to Contractor where appropriate.
- C. Owner will arrange and pay for delivery of Owner-furnished items according to Contractor's Construction Schedule.
- D. After delivery, Owner will inspect delivered items for damage. Contractor shall be present for and assist in Owner's inspection if required.
- E. If Owner-furnished items are damaged, defective, or missing, Owner will arrange for replacement.
- F. Owner will arrange for manufacturer's field services and for delivery of manufacturer's warranties to Contractor.
- G. Owner will furnish Contractor the earliest possible delivery date of Owner-furnished products. Using Owner-furnished earliest possible delivery dates. Contractor shall designate delivery dates of Owner-furnished items in Contractor's Construction Schedule.

1.6 OWNER'S OCCUPANCY REQUIREMENTS

- A. Full Owner Occupancy: Owner will occupy site and existing buildings during entire construction period. Cooperate with Owner during construction operations to minimize conflicts and facilitate Owner usage. Perform the Work so as not to interfere with Owner's day-to-day operations. Maintain existing exits.
  - 1. Maintain access to existing facility. Do not close or obstruct access to occupied or used areas without written permission from Owner and authorities having jurisdiction.
  - 2. Provide not less than 72 hours' notice to Owner of activities that will affect Owner's operations.
- B. Owner Occupancy of Completed Areas of Construction: Owner reserves the right to occupy completed before Substantial Completion, provided such occupancy does not interfere with completion of the Work. Such partial occupancy shall not constitute acceptance of the total Work.
  - 1. Architect will prepare a Certificate of Substantial Completion for the Work to be occupied before Owner occupancy.
  - 2. Obtain a Certificate of Occupancy from authorities having jurisdiction before Owner occupancy.

1.7 WORK RESTRICTIONS

- A. Work Restrictions, General: Comply with restrictions on construction operations. Comply with limitations on use of public roads and streets and with other requirements of authorities having jurisdiction.
- B. On-Site Work Hours: Contractor shall coordinate work schedule with Owner. Additional overtime labor may need to be factored into the Contractors' Bid in order to meet completion schedule. Such overtime must be scheduled with the Owner. See Supplementary Conditions for weather

delays.

- C. Existing Utility Interruptions: Do not interrupt utilities serving facilities occupied by Owner or others unless permitted under the following conditions and then only after arranging to provide temporary utility services according to requirements indicated:
  - 1. Do not interrupt utilities serving facilities occupied by Owner or other unless permitted under the following conditions and then only after providing temporary utility services according to requirements indicated.
  - 2. Notify Architect and Owner not less than two days in advance of proposed utility interruptions.
  - 3. Obtain Owner's written permission before proceeding with utility interruptions.
- D. Noise, Vibration and Odors: Coordinate operations that may result in high levels of noise and vibration, odors, or other disruption to Owner occupancy with Owner.
  - 1. Notify Architect and Owner not less than two days in advance of proposed disruptive operations.
  - 2. Obtain Architect's and Owner's written permission before proceeding with disruptive operations.
- E. Non-Smoking Project Site: Smoking is not permitted on Project site.
- F. Controlled Substances: Use of tobacco products and other controlled substances on Project site is not permitted.
- G. Employee Identification: Provide identification tags for Contractor personnel working on Project site. Require personnel to use identification tags at all times.

#### 1.8 TYPE OF CONTRACT

Project will be constructed under a single prime contract

#### 1.9 USE OF PREMISES

- A. General: Contractor shall have limited use of premises for construction operations.
- B. Use of Site: Limit use of premises and confine construction operations to areas within the Contract limits. Do not disturb portions of Project site beyond areas in which the Work is indicated.
  - 1. Owner Occupancy: See "Owner's Occupancy Requirements".
  - 2. Driveways, Walkways and Entrances: Keep driveways, walkways, loading areas, and entrances serving premises clear and available to Owner, Owner's employees, and emergency vehicles at all times. Do not use these areas for parking or storage of materials.
    - a. Schedule deliveries to minimize use of driveways and entrances.
    - b. Schedule deliveries to minimize space and time requirements for storage of materials and equipment on-site.

1.10 EXISTING CONDITIONS

- A. Existing Utilities: See Section 017300 "Execution".
- B. Damage to Existing Conditions: Prior to commencement of operations the Contractor, along with the Owner and the Architect, shall examine existing conditions. Contractor shall record all conditions as a record of preconstruction condition. Contractor shall submit DVD with narration as to location to the Architect prior to construction. It shall be the responsibility of the Contractor to rectify any damage.

1.11 CONDUCT OF OPERATIONS

- A. Construction of the Project shall be conducted in conformance with all governing regulations, codes and standards and in a manner to allow the Owner and the public to safely utilize the existing premises during the construction period. Contractor is solely responsible for contacting authorities to ascertain their requirements in regard to safety and to include costs in his Bid.
- B. Prior to commencement of operations, the Contractor shall submit to the Owner and the Architect at the Preconstruction Conference his detailed Scheduling Plan/Sequence of Operations outlining his proposed method of operation, location of temporary facilities, storage of materials, Contractor's parking, etc., for the Owner's review and approval. The Scheduling Plan/Sequence of Operations shall be prepared by the Contractor in collaboration with the Owner. The Owner retains final authority regarding the disposition of these functions.
- C. Contractor shall provide fences, barricades, etc. between construction areas and existing facilities as required to protect the Owner and others from injury, as required by the governing building and fire departments, other governing authorities, and shall pay for same.
- D. Contractor shall maintain fire, police, and other emergency access to all parts of the construction area as acceptable to the fire and police departments having jurisdiction and shall include costs in his Bid.
- E. At the Preconstruction Conference the Contractor shall:
  - 1. Review his noise abatement program. Contractor will be required to hold noise to a minimum during hours the work day, including no radios, power-activated and pneumatic tools, sawing, hammering, etc.
  - 2. Address his code of conduct for workers, which shall include provisions that workers be required to wear shirts, be free of alcohol, drugs, carrying of firearms, smoking, and foul language, not fraternize with students or staff. Contractor and Subcontractors shall not employ workers convicted of felony sex crimes. In general, Contractor and his employees shall conduct themselves in a professional manner respecting others.
  - 3. In conjunction with the Owner and Architect determine staging, storage, and parking areas for the Project. Owner will retain the right to approve or reject Contractor's proposed staging area.

1.12 SPECIFICATION AND DRAWING CONVENTIONS

- A. Specification Content: The Specifications use certain conventions for the style of language and the intended meaning of certain terms, words, and phrases when used in particular situations. These conventions are as follows:
  - 1. Imperative mood and streamlined language are generally used in the Specifications. The words "shall," "shall be," or "shall comply with," depending on the context, are implied

where a colon (:) is used within a sentence or phrase.

2. Specification requirements are to be performed by Contractor unless specifically stated otherwise.
- B. Division 01 General Requirements: Requirements of Sections in Division 01 apply to the Work of all Sections in the Specifications.
- C. Drawing Coordination: Requirements for materials and products identified on the Drawings are described in detail in the Specifications. One or more of the following are used on the Drawings to identify materials and products:
  1. Terminology: Materials and products are identified by the typical generic terms used in the individual Specifications Sections.
  2. Abbreviations: Materials and products are identified by abbreviations.
  3. Keynoting: Materials and products are identified by reference keynotes referencing Specification Section numbers found in this Project Manual.

#### 1.13 CONSTRUCTION SEQUENCE

- A. Contractor shall schedule the sequence of construction to substantially complete all work over the District's summer break in 2021. Closing day is currently scheduled for May 13, 2021. Contractor shall prepare his projected Construction Schedule and Sequencing of Operations for review and approval by the Owner at the Preconstruction Conference. Bidder shall indicate his completion date on the Form of Proposal.
- B. Sequence of Operations shall outline Contractor's proposed method of operation, location of temporary facilities, storage of materials, Contractors' parking, etc. The Owner retains final authority regarding the disposition of these functions. Contractor shall submit his proposed staging area to be approved by the Owner.
- C. See Sections 012900 "Payment Procedures" and 013100 "Project Management and Coordination" for time frames for submission of Construction Schedule and Sequence of Operations.

#### 1.14 PHASING

- A. Contractor shall address all phasing issues with the governing building department, the local fire department, and all other governing authorities.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION 011000



## DIVISION 01 - GENERAL REQUIREMENTS

### 01.1 RELATED DOCUMENTS

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

### 01.2 SECTION 012100 – ALLOWANCES

- A. Coordinate materials and their installation for each allowance with related materials and installations to ensure that each allowance item is completely integrated and interfaced with related work.

- 1. There are no Allowances unless added via Addendum.

### 01.3 SECTION 012200 – UNIT PRICES

- A. Unit price is an amount proposed by Bidders and stated on the Form of Proposal, as a price per unit of measurement for materials or services added to or deducted from the Contract Sum by appropriate modification, if estimated quantities of Work required by the Contract Documents are increased or decreased.
- B. Unit prices include all necessary labor, materials, delivery, installation, insurance, applicable taxes, overhead, and profit.

### 01.4 SECTION 012300 – ALTERNATES

- A. Bidders shall state on Form of Proposal the change in Base Bid Price for any Alternate Bids, as outlined in the Contract Documents. Bidding Conditions outlined in the Bidding Documents shall be adhered to. It is the Contractor's responsibility to ensure that all Subcontractors understand scope of alternates and to assemble various omissions, substitutions and additions so that alternate reflects all affected Construction (labor, materials, and equipment), including additional Construction in one trade made necessary by additions, deductions, or substitutions in another. No consideration will be given to any claim for extra money arising from Contractor's failure to properly exercise this responsibility.

- B. Schedule of Alternates:

- 1. There are no Alternates unless issued by Addendum.

### 01.5 SECTION 012900 – PAYMENT PROCEDURES

- A. Schedule of Values: Schedule of Values shall be prepared in such a manner that each major item of Work and each subcontracted item of Work shall show on the latest edition of AIA Document G703, Application and Certificate for Payment Continuation Sheet. Provide a breakdown of the contract sum in sufficient detail to facilitate continued evaluation of Applications for Payment. Break principal subcontract amounts down into several line items. Round amounts off to nearest whole dollar; the total shall equal the contract sum. More detailed breakdowns of any and all areas of Work shall be provided if requested by the Architect. The Schedule of Values shall be submitted at the Pre-Construction Conference.
- B. Applications for Payment: Form of all Applications for Payment shall be the latest edition of AIA Document G702, Application and Certificate for Payment, supported by the latest edition of AIA Document G703 Continuation Sheet and is available from the AIA Chapter office in Cincinnati.

- C. Preparation: Complete every entry on the form, including notarization and execution by person authorized to sign legal documents on behalf of the Contractor. Entries shall match data on the Schedule of Values and Contractor's Construction Schedule. Include amounts of Change Orders only after they have been fully approved by all necessary parties. Applications must be submitted in duplicate and supported by such documentation as the Owner may require.

Stored materials are not to be removed from the site, are to be properly insured, and are subject to such documentation as the Owner or Architect may require. No monies will be paid for materials stored off the site.

If reduction in retainer is granted, the Owner shall retain the right to reinstate the full ten percent retainage if the manner of completion of the Work and its progress do not remain satisfactory, if the required project maintenance/cleanliness level is not adhered to, or for other good and sufficient reasons. Refer to other sections of the Project Manual dealing with this subject, particularly Section 013100 "Project Management and Coordination" and Section 017700 "Closeout Procedures".

- D. Final Completion and Final Payment: Application for Final Payment and remaining retained percentage shall adhere to all requirements previously set forth for submission of Applications for Payment, as well as be accompanied by the latest edition of Contractor's Affidavit of Payment of Debts and Claims (AIA G706) and such other documentation as the Owner may require.

#### 01.6 SECTION 013100 – PROJECT MANAGEMENT AND COORDINATION

- A. Coordination: The Work of this Contract includes coordination of the entire work of the Project. Coordination shall include preparation of schedules and control of site utilization from beginning of construction activity through project close-out and warranty periods. Where applicable, requirements of the Contract Documents apply to alterations portions of the Work in the same manner as to new construction.
- B. Coordination Drawings: Prepare and submit Coordination Drawings where close and careful coordination is required. Comply with requirements contained in Section 013300 "Submittal Procedures".
- C. Staff Names: Upon execution of the Contract, Contractor shall designate his Project Manager and Job Superintendent.
- D. General Installation Provisions: Contractor is required to inspect conditions under which work is to be performed. Do not proceed until unsatisfactory conditions have been corrected in an acceptable manner.
- E. Pre-Construction Conference and Progress Meetings: Before Work is begun, Contractor shall schedule Preconstruction Conference involving the Owner, the Contractor's Project Manager and Job Superintendent, the Architect, and other concerned parties, all familiar with the Project and authorized to conclude matters relating to the Work. At this time, the Contractor shall submit for review his Construction Schedule and Schedule of Values. Contractor shall conduct meeting, record minutes and submit copies of minutes to Owner, the Architect and all other pertinent parties within five days of meeting.
- F. RFI Forms:
1. General: Immediately on discovery of the need for additional information or interpretation of the Contract Documents, Contractor shall prepare and submit an RFI in the form specified. RFI's shall not be submitted unnecessarily or frivolously,

but only after the Contractor has thoroughly familiarized himself with the Contract Documents.

- a. Architect will return RFI's submitted to Architect by other entities controlled by Contractor with no response.
- b. Coordinate and submit RFI's in a prompt manner so as to avoid delays in Contractor's work or work of subcontractors

- 2. Form is bound into Project Manual at the end of this Section. Software-generated form with substantially the same content as indicated above may be submitted to the Architect for consideration.

G. Progress meetings will be held as necessary.

#### 01.7 SECTION 013300 – SUBMITTAL PROCEDURES

- A. Coordinate preparation and processing of submittals with performance of construction activities. Transmit each submittal sufficiently in advance of performance of related construction activities to avoid delay.
- B. Processing: Allow sufficient review time so that installation will not be delayed as a result of the time required to process submittals, including time for resubmittals. No extension of Contract Time will be authorized because of failure to transmit submittals to the Architect sufficiently in advance of the Work to permit processing.
- C. Submittal Preparation: Place a permanent label or title block on each submittal for identification with the following information:
  - Project name.
  - Date.
  - Name and address of Architect.
  - Name and address of Contractor.
  - Name and address of Subcontractor.
  - Name and address of Supplier.
  - Name of Manufacturer.
  - Number and title of appropriate Specification Section.
  - Drawing number and detail references, as appropriate.
- D. Submittal Transmittal: Transmit each submittal from Contractor to Architect using a separate transmittal form for each item. Submittals received from sources other than the Contractor will be returned without action. On the transmittal record all relevant information pertaining to submittal and requests for data. On the form, or separate sheet, record deviations from Contract Document requirements, including minor variations and limitations. Include Contractor's certification that information complies with Contract Document requirements.
- E. Contractor's Construction Schedule: Contractor shall submit his Construction Schedule to the Architect at the Pre-Construction Conference. Before the First Application for Payment, Contractor shall submit to the Architect two copies of the finalized Construction Schedule outlining all phases of the Work, showing the sequence of operations from Project entry to completion. If requested by the Owner or Architect, three copies of a monthly Construction Schedule shall accompany the Contractor's monthly Application for Payment, shall show sufficient information for determining percentages of completion, and shall be revised as required by the conditions of the Work.

Any deviation from the Construction Schedule shall be discussed with the Owner and the Architect in advance of proposed change. Changes due to extensions of time shall be fully documented by the Contractor. Contractor shall file with the Architect a report in writing regarding delays in progress of the Work, description, circumstances, events and length of time progress is delayed. This report shall be filed within the specified length of time in the General Conditions for consideration of extensions of contract time.

- F. Contractor's Scheduling Plan/Sequence of Operations: Prior to commencement of Work, the Contractor shall submit to the Architect at the Preconstruction Conference, his detailed Scheduling Plan outlining his proposed method of operation, storage of materials, contractors' parking, etc., for the Owner's review and approval. The Owner retains final authority regarding the disposition of these functions.
- G. Daily Construction Reports: Contractor shall prepare Daily Construction Reports, recording appropriate information concerning events at the site and submit to Architect at weekly intervals. Reports to include, but not be limited to:
- Workmen at the site
  - Job conditions relating to delays, accidents, problems, etc.
  - Site visitors
  - Contractor's labor forces
  - Progress of Work
- H. Shop Drawings, Product Data, and Samples: Shop drawings, product data and samples shall be dated and marked to show the names of the Project, Architect, and Contractor. Shop drawings, product data and samples shall completely identify Specification section and locations at which materials or equipment are to be installed.

Each and every shop drawing, setting drawing, etc., submitted to the Architect shall bear a stamped certification over the Contractor's signature indicating that the drawings have been thoroughly pre-checked and approved by the Contractor. Drawings which do not bear such certification will be returned for pre-checking and such certification. Any delay in securing final review of such drawings shall be adjudged to be the fault of the Contractor. If the shop drawings are stamped, but the Contractor's stamp does not include such approval by the Contractor, the Architect will be forced to assume that the stamp placed on the shop drawing indicates that the submittal was reviewed and coordinated as required by the General Conditions, Supplementary Conditions and this Division 01, and that the Contractor assumes the responsibilities required therein.

Submittal: Shop drawings submitted directly by Subcontractors or manufacturers will not be accepted. Submit four copies of cuts of standard manufactured items, in the form of manufacturer's catalog sheets, which shall show scale details, sizes, dimensions, performance characteristics, capacities, wiring diagrams and controls and any other pertinent information.

Distribution: Contractor is responsible for obtaining and distributing required prints of shop drawings to his Subcontractors and material suppliers after, as well as before, final review. Prints of reviewed shop drawings shall be made from transparencies which carry the Architect's appropriate stamp.

Architect's Action: After review, Architect will return shop drawings to Contractor. When shop drawings are returned with notation "Revise and Resubmit" or "Exceptions Noted-Submit Record Copy", the drawings shall be corrected and resubmitted.

Where marked "Revise and Resubmit", do not proceed with that part of the Work covered by the submittal, including purchasing, fabrication, delivery or other activity and do not

permit submittals to be used at the Project site or elsewhere while Work is in progress. Where marked "Exceptions Noted - Submit Record Copy" that part of the Work covered by the submittal may proceed provided it complies with notations or corrections on the submittal and requirements of the Contract Documents. Final acceptance will depend on that compliance.

When shop drawings are returned by the Architect to the Contractor with "No Exceptions" or "Exceptions Noted", these designations do not authorize changes to the Contract Sum or Contract Time. That part of the Work covered by the submittal may proceed provided it complies with notations or corrections on the submittal and requirements of the Contract Documents. Final acceptance will depend upon that compliance.

Other Action: Where a submittal is primarily for information or record purposes, special processing or other activity, the submittal will be returned, marked "Action Not Required".

Architect's Processing and Review: Review of shop drawings by the Architect neither extends nor alters any contractual obligation of the Architect or Contractor, nor shall Architect's review constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures.

#### 01.8 SECTION 015000 - TEMPORARY FACILITIES AND CONTROLS

- A. Comply with industry standards and all applicable laws and regulations of authorities having jurisdiction. Keep temporary services and facilities clean and neat in appearance. Operate in a safe and efficient manner. Take necessary fire prevention measures. Do not overload facilities, or permit them to interfere with progress. Do not allow hazardous, dangerous or unsanitary conditions, or public nuisances to develop or persist on the site.

- B. Temporary Utilities

Water: Contractor may use Owner's existing water for construction purposes. Cost of the water consumed (and resulting sanitation charges) shall be borne by the Owner.

Sanitary Facilities: Contractor may use Owner's existing sanitary and wash facilities provided a high degree of cleanliness is maintained.

Electricity and Lighting: Cost of electrical current shall be borne by the Owner.

Telephone: Contractor shall be able to be reached by telephone throughout the day, at his expense. Accordingly, he shall provide the means to do this.

- C. Storage and Material Sheds: Contractor shall provide adequate storage to house tools and materials which require protection from weather. Include floors raised above ground as required to keep materials dry and otherwise undamaged. Contractor shall coordinate arrangements of storage areas and sheds ensuring that no sheds or stockpiles are located over lines or areas where underground or other work is to be installed, and that there are no violations of pertinent laws, ordinances, and regulations or of provisions of building and other permits.

All materials stored in the open on the site shall be stored on planks or similar material as necessary to keep materials from contact with ground and shall be covered to protect them from the weather. All storage sheds, equipment and operations shall be confined to the immediate vicinity of the Work in areas as shown or as directed by the Architect.

- D. Contractor Parking: Contractor parking shall be limited to areas as directed by Owner.

Such arrangements will be confirmed at the Pre-Construction Meeting.

- E. Project Identification and Temporary Signs: No advertisements or signs will be allowed to be displayed on the building or site, except for temporary signs which shall be prepared to provide directional information and safety notices to construction personnel and visitors.
- F. Environmental Protection: The Contractor shall comply with all federal, state, and local laws and regulations controlling pollution of the environment. Submit matters of interpretation of standards to appropriate administrative agency for resolution before starting Work. The Contractor shall further comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, and laws regarding erosion control. In the event of conflict between these requirements and pollution control laws, rules or regulations of other federal, state, or local agencies, the more restrictive laws, rules, or regulations shall apply.

#### 01.9 SECTION 016000 – PRODUCT REQUIREMENTS

- A. Deliver, store and handle products in accordance with the manufacturer's recommendations, using means and methods that will prevent damage, deterioration and loss, including theft.
- B. Product Selection: Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed. When only one product and manufacturer is specified, this is the basis of the Contract, without substitution or exception. When Contractor proposes to use "approved equal" materials/products, he shall meet all requirements of the Bidding Documents and Contract Documents regarding substitutions, and the Architect's decision on their acceptability shall be final.
- C. Performance Specification Requirements: Where Specifications require compliance with performance requirements, provide products that comply with these requirements, and are recommended by the manufacturer for the application indicated. General overall performance of a product is implied where the product is specified for a specific application. Manufacturer's recommendations may be contained in published product literature, or by the manufacturer's certification of performance.
- D. Visual Matching: Where Specifications require matching an established sample, the Architect's decision will be final on whether a proposed product matches satisfactorily.
- E. Product Substitutions: After the Contract has been executed, if certain job circumstances warrant, the Owner and the Architect will consider a formal request for substitution of products in place of those specified. Identify the product, or the fabrication or installation method to be replaced in each request. Include related Specification Section and Drawing numbers. Provide complete documentation showing compliance with the requirements for substitutions, and the following information, as appropriate:

Product Data, including drawings and descriptions of products, fabrication and installation procedures, and samples where applicable.

A detailed comparison of significant qualities of the proposed substitution with that specified. Significant qualities may include elements such as size, weight, durability, performance and visual effect.

Coordination information, including a list of changes or modifications needed to other parts

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of the Work and to construction performed by the Owner and any separate Contractors, that will become necessary to accommodate the proposed substitution.

A statement indicating the substitution's effect on the Contractor's Construction Schedule compared to the schedule without approval of the substitution. Indicate the effect of the proposed substitution on overall Contract Time.

Cost information, including a proposal of the net change, if any, in the Contract Sum.

Substitution Requirements: In making requests for substitutions, the Contractor:

1. Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified including, but not limited to, physical dimensions, structural characteristics, code acceptance, capacity, performance durability and all other characteristics which differ in any way from the materials specified;
2. Represents that he will provide the same warranty for the substitution that he would for that specified;
3. Certifies that the cost data presented is complete and includes all related costs under this Contract, except the Architect's redesign costs, and waives all claims for additional costs and additional time related to the substitution which subsequently become apparent;
4. Assures that the substitution will overcome any incompatibilities created by the specified product;
5. Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects.

Architect's acceptance of the equal or substitute item does not nullify these responsibilities of the Contractor in any respect.

## 01.10 SECTION 017300 – EXECUTION

### Cutting and Patching:

- A. Cutting: Removal of in-place construction necessary to permit installation or performance of other Work.
- B. Patching: Fitting and repair work required to restore surfaces to original conditions after installation of other Work. Existing holes, openings, etc. in existing walls to remain shall also be patched.
- C. Structural Elements: Do not cut and patch structural elements in a manner that could change their load-carrying capacity or load-deflection ratio.
- D. Operational Elements: Do not cut and patch operating elements and related components in a manner that results in reducing their capacity to perform as intended or that results in increased maintenance or decreased operational life or safety.
- E. Miscellaneous Elements: Do not cut and patch miscellaneous elements or related components in a manner that could change their load-carrying capacity, that results in reducing their capacity to perform as intended, or that results in increased maintenance or decreased operational life or safety.
- F. Visual Requirements: Do not cut and patch construction in a manner that results in visual

evidence of cutting and patching. Do not cut and patch construction exposed on the exterior or in occupied spaces in a manner that would, in Architect's opinion, reduce the building's aesthetic qualities. Remove and replace construction that has been cut and patched in a visually unsatisfactory manner.

- G. Existing Warranties: Remove, replace, patch, and repair materials and surfaces cut or damaged during cutting and patching operations, by methods and with materials so as not to void existing warranties.
- H. In-Place Materials: Use materials identical to in-place materials. For exposed surfaces, use materials that visually match in-place adjacent surfaces to the fullest extent possible. If identical materials are unavailable or cannot be used, use materials that, when installed, will match the visual and functional performance of in-place materials.
- I. Examine surfaces to be cut and patched and conditions under which cutting and patching are to be performed. Before patching, verify compatibility with and suitability of substrates, including compatibility with in-place finishes or primers. Proceed with installation only after unsafe or unsatisfactory conditions have been corrected.
- J. Temporary Support: Provide temporary support of Work to be cut.
- K. Protection and Adjoining Areas: Protect in-place construction during cutting and patching to prevent damage. Provide protection from adverse weather conditions for portions of Project that might be exposed during cutting and patching operations. Avoid interference with use of adjoining areas or interruption of free passage to adjoining areas. Provide materials to limit dust contamination to room while cutting is underway and until dust has settled.
- L. Existing Utility Services and Mechanical/Electrical Systems: Where existing services/systems are required to be removed, relocated, or abandoned, bypass such services/systems before cutting to minimize interruption to occupied areas.
- M. Cutting: Cut in-place construction to provide for installation of other components or performance of other construction, and subsequently patch as required to restore surfaces to their original condition. Cut in-place construction by sawing, drilling, breaking, chipping, grinding, and similar operations, using methods least likely to damage elements retained or adjoining construction. If possible, review proposed procedures with original Installer; comply with original Installer's written recommendations. In general, use hand or small power tools designed for sawing and grinding, not hammering and chopping. Cut holes and slots as small as possible, neatly to size required, and with minimum disturbance of adjacent surfaces. Temporarily cover openings when not in use.
- N. Finished Surfaces: Cut or drill from the exposed or finished side into concealed surfaces.
- O. Patching: Patch construction by filling, repairing, refinishing, closing up, and similar operations following performance of other Work. Patch with durable seams that are as invisible as possible. Provide materials and comply with installation requirements specified in other Sections.
- P. Inspection: Where feasible, test and inspect patched areas after completion to demonstrate integrity of installation.
- Q. Exposed Finishes: Restore exposed finishes of patched areas and extend finish restoration into retained adjoining construction in a manner that will eliminate evidence of patching and refinishing. Clean piping, conduit, and similar features before applying paint or other finishing materials. Restore damaged pipe covering to its original condition.



- R. Floors and Walls: Where walls or partitions that are removed extend one finished area into another, patch and repair floor and wall surfaces in the new space. Provide an even surface of uniform finish, color, texture, and appearance. Remove in-place floor and wall coverings and replace with new materials, if necessary, to achieve uniform color and appearance. Where patching occurs in a painted surface, apply primer and intermediate paint coats over the patch and apply final paint coat over entire unbroken surface containing the patch. Provide additional coats until patch blends with adjacent surfaces.
- S. Cleaning: Clean areas and spaces where cutting and patching are performed. Completely remove paint, mortar, oils, putty, and similar materials.

#### Product Installation

- A. General Installation Provisions: Require the Installer of each major component to inspect both the substrate and conditions under which work is to be performed. Do not proceed until unsatisfactory conditions have been corrected in an acceptable manner. Inspect materials or equipment immediately upon delivery and again prior to installation. Reject damaged and defective items.

Manufacturer's Instructions: Comply with manufacturer's installation instructions and recommendations, to the extent that those instructions and recommendations are more explicit or stringent than requirements contained in Contract Documents.

Installation: Recheck measurements and dimensions, before starting each installation. Secure work true to line and level. Allow for expansion and movement.

Provide uniform joint widths in exposed work. Arrange joints in exposed work to obtain the best visual effect. Refer questionable choices to the Architect for final decision.

#### Cleaning and Protection

- A. Cleaning and Protection: Contractor shall provide dust barriers to contain the dust during demolition operations. Repair damage caused by construction operations. Take all precautions necessary to protect the buildings, this Work, and all occupants during the construction period. To extent possible through reasonable control and protection methods, supervise performance of Work in a manner and by means which will ensure that none of the Work, whether completed or in progress, will be subjected to harmful, dangerous, damaging, or otherwise deleterious exposures during construction period.

During handling and installation of Work at Project site Contractor shall clean and protect Work in progress and adjoining Work on a daily basis. Comply with manufacturer's instructions for safety standards and governing regulations for all cleaning operations.

Do not burn waste materials on site or bury debris or excess materials on Owner's property or discharge volatile or other harmful or dangerous materials into drainage systems. Remove waste materials from site and dispose of in a lawful manner.

#### 01.11 SECTION 017419 – CONSTRUCTION WASTE MANAGEMENT AND DISPOSAL

- A. Construction Waste: Building and site improvement materials and other solid waste resulting from construction, remodeling, renovation, or repair operations. Construction waste includes packaging.
- B. Demolition Waste: Building and site improvement materials resulting from demolition or selective demolition operations.

- C. Disposal: Removal off-site of demolition and construction waste and subsequent sale, recycling, reuse, or deposit in landfill or incinerator acceptable to authorities having jurisdiction.
- D. Regulatory Requirements: Comply with hauling and disposal regulations of authorities having jurisdiction.
- E. Site Access and Temporary Controls: Conduct waste management operations to ensure minimum interference with roads, streets, walks, walkways, and other adjacent occupied and used facilities.
- F. General Disposal of Waste: Except for items or materials to be salvaged, recycled, or otherwise reused, remove waste materials from Project site and legally dispose of them in a landfill or incinerator acceptable to authorities having jurisdiction.
  - 1. Except as otherwise specified, do not allow waste materials that are to be disposed of accumulate on-site.
  - 2. Remove and transport debris in a manner that will prevent spillage on adjacent surfaces and areas.
- G. Burning: Do not burn waste materials.
- H. Disposal: Transport waste materials off Owner's property and legally dispose of them.

#### 01.12 SECTION 017700 – CLOSEOUT PROCEDURES

- A. Cleaning: See Section 012900 "Payment Procedures" for maintenance and cleaning program as it relates to any reductions in retainage. Also see other sections of this Project Manual relating to this subject, particularly Section 013100 "Project Management and Coordination". Site must be left in first class, clean condition upon completion of the landscaping work.
- B. Substantial Completion: Upon requesting an inspection for a Certificate of Substantial Completion for the total Project or a portion of the Project:
  - 1. The Contractor shall submit to the Architect, approximately two weeks prior to anticipated date of Substantial Completion, his list of items yet to be completed and all punchlist items that he feels do not meet the Contract Documents. The Contractor shall advise the Architect when, after personally verifying each and every item on both lists, all incomplete items and punchlist items have been completed and/or corrected. Then, the Architect will prepare his punchlist.
  - 2. The Project shall meet the criteria of maintenance and cleaning outlined above.
- C. Final Acceptance: Before requesting final inspection for certification of final acceptance and final payment, the Contractor shall submit to the Architect all documents required by various sections of these specifications, and letter indicating all punchlist items have been completed.
  - 1. Contractor shall verify that the Project meets the criteria of maintenance and cleaning outlined above.

Electronic Record Drawings: Contractor shall forward the Architect hard copies of all record documents (including construction drawings, specifications, addenda, contract changes, shop drawings, manuals, product list, warranties, etc.). In addition, Contractor

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shall submit a CD of all project record documents scanned into PDF format capable of being opened by Adobe Acrobat Reader. All PDF files shall be organized using Microsoft Excel into a log based on CSI divisions and hyperlinked to launch the documents. Contractor is cautioned to be certain all documents are complete and correct before scanning to preclude re-scanning at Contractor's expense if corrections are necessary

Closeout Manuals: Contractor shall submit closeout manuals for all portions of work.

END OF GENERAL REQUIREMENTS

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(Contractor to reproduce on Contractor's letterhead)

**Request for Information**

To: Robert Ehmet Hayes & Associates, PLLC

Date: \_\_\_\_\_

Attention: \_\_\_\_\_

RFI No: \_\_\_\_\_

From: \_\_\_\_\_

Contractor's Job #: \_\_\_\_\_

Project: \_\_\_\_\_

Architect's Project #: \_\_\_\_\_

Subject: \_\_\_\_\_

Drawing/Specification References \_\_\_\_\_

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**Request:**

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**Response:**

Response From: \_\_\_\_\_

Date: \_\_\_\_\_

c:

***RFI must be forwarded to Architect at least 5 days prior to needing response. Any cost impact or scheduling impact due to this response shall be forwarded to the Architect for review within 10 days of the Architect's response and before work relative to this RFI is begun, or assumption will be "no impact".***

## SECTION 024119 - SELECTIVE DEMOLITION

### PART 1 - GENERAL

#### 1.1 SUMMARY

A. Section Includes:

1. Demolition and removal of selected portions of building or structure.

B. Related Requirements:

1. Section 011000 "Summary" for restrictions on use of the premises, Owner-occupancy requirements, and phasing requirements.
2. Section 017300 "Execution" for cutting and patching procedures.

#### 1.2 DEFINITIONS

- A. Remove: Detach items from existing construction and dispose of them off-site unless indicated to be salvaged or reinstalled.
- B. Existing to Remain: Leave existing items that are not to be removed and that are not otherwise indicated to be salvaged or reinstalled.

#### 1.3 MATERIALS OWNERSHIP

- A. Unless otherwise indicated, demolition waste becomes property of Contractor.
- B. Historic items, relics, antiques, and similar objects including, but not limited to, cornerstones and their contents, commemorative plaques and tablets, and other items of interest or value to Owner that may be uncovered during demolition remain the property of Owner.
1. Carefully salvage in a manner to prevent damage and promptly return to Owner.

#### 1.4 FIELD CONDITIONS

- A. Owner will occupy portions of building immediately adjacent to selective demolition area. Conduct selective demolition so Owner's operations will not be disrupted.
- B. Conditions existing at time of inspection for bidding purpose will be maintained by Owner as far as practical.
- C. Notify Architect of discrepancies between existing conditions and Drawings before proceeding with selective demolition.
- D. Hazardous Materials: It is not expected that hazardous materials will be encountered in the Work.

1. If suspected hazardous materials are encountered, do not disturb; immediately notify Architect and Owner. Hazardous materials will be removed by Owner under a separate contract.

#### 1.5 WARRANTY

- A. Existing Warranties: Remove, replace, patch, and repair materials and surfaces cut or damaged during selective demolition, by methods and with materials and using approved contractors so as not to void existing warranties. Notify warrantor before proceeding.

#### 1.6 COORDINATION

- A. Arrange selective demolition schedule so as not to interfere with Owner's operations.

### PART 2 - PRODUCTS

### PART 3 - EXECUTION

#### 3.1 PROTECTION

- A. Temporary Protection: Provide temporary barricades and other protection required to prevent injury to people and damage to adjacent buildings and facilities to remain.
  1. Provide protection to ensure safe passage of people around selective demolition area and to and from occupied portions of building.
  2. Protect walls, ceilings, floors, and other existing finish work that are to remain or that are exposed during selective demolition operations.
  3. Cover and protect furniture, furnishings, and equipment that have not been removed.
- B. Remove temporary barricades and protections where hazards no longer exist.

#### 3.2 SELECTIVE DEMOLITION, GENERAL

- A. General: Demolish and remove existing construction only to the extent required by new construction and as indicated. Use methods required to complete the Work within limitations of governing regulations and as follows:
- B. Existing Items to Remain: Protect construction indicated to remain against damage and soiling during selective demolition

#### 3.3 SELECTIVE DEMOLITION PROCEDURES FOR SPECIFIC MATERIALS

- A. Resilient Floor Coverings: Remove floor coverings and adhesive according to recommendations in RFCI's "Recommended Work Practices for the Removal of Resilient Floor Coverings." [ **Do not use methods requiring solvent-based adhesive strippers.**]

3.4 DISPOSAL OF DEMOLISHED MATERIALS

- A. Remove demolition waste materials from Project site **[and dispose of them in an EPA-approved construction and demolition waste landfill acceptable to authorities having jurisdiction.**
  - 1. Do not allow demolished materials to accumulate on-site.
  - 2. Remove and transport debris in a manner that will prevent spillage on adjacent surfaces and areas.
  - 3. Remove debris from elevated portions of building by chute, hoist, or other device that will convey debris to grade level in a controlled descent.
- B. Burning: Do not burn demolished materials.

3.5 CLEANING

- A. Clean adjacent structures and improvements of dust, dirt, and debris caused by selective demolition operations. Return adjacent areas to condition existing before selective demolition operations began.

END OF SECTION 024119

## SECTION 096513 - RESILIENT BASE AND ACCESSORIES

### PART 1 - GENERAL

#### 1.1 RELATED DOCUMENTS

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

#### 1.2 SUMMARY

- A. Section Includes:
  - 1. Thermoset-rubber base.
  - 2. Rubber molding accessories.

#### 1.3 ACTION SUBMITTALS

- A. Product Data: For each type of product.
- B. Samples: For each exposed product and for each color and texture specified, not less than 12 inches (300 mm) long.
- C. Samples for Initial Selection: For each type of product indicated.
- D. Product Schedule: For resilient base and accessory products. Use same designations indicated on Drawings.

#### 1.4 MAINTENANCE MATERIAL SUBMITTALS

- A. Furnish extra materials, from the same product run, that match products installed and that are packaged with protective covering for storage and identified with labels describing contents.
  - 1. Furnish not less than 10 linear feet (3 linear m) for every 500 linear feet (150 linear m) or fraction thereof, of each type, color, pattern, and size of resilient product installed.

#### 1.5 DELIVERY, STORAGE, AND HANDLING

- A. Store resilient products and installation materials in dry spaces protected from the weather, with ambient temperatures maintained within range recommended by manufacturer, but not less than 50 deg F (10 deg C) or more than 90 deg F (32 deg C).

#### 1.6 FIELD CONDITIONS

- A. Maintain ambient temperatures within range recommended by manufacturer, but not less than 70 deg F (21 deg C) or more than 95 deg F (35 deg C), in spaces to receive resilient products during the following periods:
  - 1. 48 hours before installation.
  - 2. During installation.
  - 3. 48 hours after installation.



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- B. After installation and until Substantial Completion, maintain ambient temperatures within range recommended by manufacturer, but not less than 55 deg F (13 deg C) or more than 95 deg F (35 deg C).
- C. Install resilient products after other finishing operations, including painting, have been completed.

## PART 2 - PRODUCTS

### 2.1 THERMOSET-RUBBER BASE

- A. Manufacturers: Subject to compliance with requirements, provide products by Nora Systems, Inc., by Interface.
- B. Product Standard: ASTM F1861, Type TS (rubber, vulcanized thermoset), Group I (solid, homogeneous).
  - 1. Style and Cove (base with toe):
- C. Thickness: 0.125 inch (3.2 mm).
- D. Height: 4 inches (102 mm).
- E. Lengths: Cut lengths 48 inches (1219 mm) long or coils in manufacturer's standard length.
- F. Outside Corners: Job formed or preformed.
- G. Inside Corners: Job formed or preformed.
- H. Colors: As selected by Architect from full range of industry colors.

### 2.2 RUBBER MOLDING ACCESSORY

Manufacturers: Subject to compliance with requirements, provide products by Nora Systems, Inc., by Interface.

- A. Description: Rubber reducer strip for resilient floor covering and transition strips.
- B. Profile and Dimensions: As required for application.
- C. Locations: Provide rubber molding accessories in areas indicated.
- D. Colors and Patterns: As selected by Architect from full range of industry colors.

### 2.3 INSTALLATION MATERIALS

- A. Trowelable Leveling and Patching Compounds: Latex-modified, portland-cement-based or blended hydraulic-cement-based formulation provided or approved by resilient-product manufacturer for applications indicated.
- B. Adhesives: Water-resistant type recommended by resilient-product manufacturer for resilient products and substrate conditions indicated.

## PART 3 - EXECUTION

### 3.1 EXAMINATION

- A. Examine substrates, with Installer present, for compliance with requirements for maximum moisture content and other conditions affecting performance of the Work.
  - 1. Verify that finishes of substrates comply with tolerances and other requirements specified in other Sections and that substrates are free of cracks, ridges, depressions, scale, and foreign deposits that might interfere with adhesion of resilient products.
- B. Proceed with installation only after unsatisfactory conditions have been corrected.
  - 1. Installation of resilient products indicates acceptance of surfaces and conditions.

### 3.2 PREPARATION

- A. Prepare substrates according to manufacturer's written instructions to ensure adhesion of resilient products.
- B. Fill cracks, holes, and depressions in substrates with trowelable leveling and patching compound; remove bumps and ridges to produce a uniform and smooth substrate.
- C. Do not install resilient products until materials are the same temperature as space where they are to be installed.
  - 1. At least 48 hours in advance of installation, move resilient products and installation materials into spaces where they will be installed.
- D. Immediately before installation, sweep and vacuum clean substrates to be covered by resilient products.

### 3.3 RESILIENT BASE INSTALLATION

- A. Comply with manufacturer's written instructions for installing resilient base.
- B. Apply resilient base to walls, columns, pilasters, casework and cabinets in toe spaces, and other permanent fixtures in rooms and areas where base is required.
- C. Install resilient base in lengths as long as practical without gaps at seams and with tops of adjacent pieces aligned.
- D. Tightly adhere resilient base to substrate throughout length of each piece, with base in continuous contact with horizontal and vertical substrates.
- E. Do not stretch resilient base during installation.
- F. On masonry surfaces or other similar irregular substrates, fill voids along top edge of resilient base with manufacturer's recommended adhesive filler material.
- G. Preformed Corners: Install preformed corners before installing straight pieces.
- H. Job-Formed Corners:

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1. Outside Corners: Use straight pieces of maximum lengths possible and form with returns not less than 3 inches (76 mm) in length.
  - a. Form without producing discoloration (whitening) at bends.
2. Inside Corners: Use straight pieces of maximum lengths possible and form with returns not less than 3 inches (76 mm) in length.
  - a. Miter or cope corners to minimize open joints.

#### 3.4 RESILIENT ACCESSORY INSTALLATION

- A. Comply with manufacturer's written instructions for installing resilient accessories.
- B. Resilient Molding Accessories: Butt to adjacent materials and tightly adhere to substrates throughout length of each piece. Install reducer strips at edges of floor covering that would otherwise be exposed.

#### 3.5 CLEANING AND PROTECTION

- A. Comply with manufacturer's written instructions for cleaning and protecting resilient products.
- B. Perform the following operations immediately after completing resilient-product installation:
  1. Remove adhesive and other blemishes from surfaces.
- C. Protect resilient products from mars, marks, indentations, and other damage from construction operations and placement of equipment and fixtures during remainder of construction period.
- D. Cover resilient products subject to wear and foot traffic until Substantial Completion.

END OF SECTION 096513

## SECTION 096516 - RESILIENT PLANK FLOORING

### PART 1 - GENERAL

#### 1.1 RELATED DOCUMENTS

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

#### 1.2 SUMMARY

- A. Section includes vinyl plank flooring (LVT).

#### 1.3 ACTION SUBMITTALS

- A. Product Data: For each type of product.
- B. Shop Drawings: For each type of flooring. Include flooring layouts, locations of seams, edges, columns, doorways, enclosing partitions, built-in furniture, cabinets, and cutouts.
  - 1. Show details of special patterns.
- C. Samples for Initial Selection: For each type of resilient plank flooring indicated.

#### 1.4 INFORMATIONAL SUBMITTALS

- A. Qualification Data: For Installer.

#### 1.5 CLOSEOUT SUBMITTALS

- A. Maintenance Data: For each type of resilient plank flooring to include in maintenance manuals.

#### 1.6 MAINTENANCE MATERIAL SUBMITTALS

- A. Furnish extra materials that match products installed and that are packaged with protective covering for storage and identified with labels describing contents.
  - 1. Resilient Plank Flooring: Furnish not less than 10 linear feet (3 linear m) for every 500 linear feet (150 linear m) or fraction thereof, in roll form and in full roll width for each type, color, and pattern of flooring installed.

#### 1.7 QUALITY ASSURANCE

- A. Installer Qualifications: A qualified installer who employs workers for this Project who are competent in techniques required by manufacturer for resilient plank flooring installation and seaming method indicated.

#### 1.8 DELIVERY, STORAGE, AND HANDLING

- A. Store resilient plank flooring and installation materials in dry spaces protected from the weather, with ambient temperatures maintained within range recommended by manufacturer, but not less than 50 deg F (10 deg C) or more than 90 deg F (32 deg C). Store rolls upright.

## 1.9 FIELD CONDITIONS

- A. Maintain ambient temperatures within range recommended by manufacturer, but not less than 70 deg F (21 deg C) or more than 85 deg F (29 deg C), in spaces to receive resilient plank flooring during the following time periods:
  - 1. 48 hours before installation.
  - 2. During installation.
  - 3. 48 hours after installation.
- B. After installation and until Substantial Completion, maintain ambient temperatures within range recommended by manufacturer, but not less than 55 deg F (13 deg C) or more than 95 deg F (35 deg C).
- C. Close spaces to traffic during resilient plank flooring installation.
- D. Close spaces to traffic for 48 hours after resilient plank flooring installation.
- E. Install resilient plank flooring after other finishing operations, including painting, have been completed.

## PART 2 - PRODUCTS

### 2.1 PERFORMANCE REQUIREMENTS

- A. Fire-Test-Response Characteristics: For resilient plank flooring, as determined by testing identical products according to ASTM E 648 or NFPA 253 by a qualified testing agency.
  - 1. Critical Radiant Flux Classification: Class I, not less than 0.45 W/sq. cm.

### 2.2 UNBACKED VINYL PLANK FLOORING

- A. Provide Interface “Natural Woodgrains”.
- B. Thickness: 4.5 mm.
- C. Plank Width: 25 cm.
- D. Plank Length: 1 m.
- E. Colors and Patterns: As selected by Architect from full range of industry colors.

### 2.3 INSTALLATION MATERIALS

- A. Trowelable Leveling and Patching Compounds: Latex-modified, portland cement based or blended hydraulic-cement-based formulation provided or approved by resilient plank flooring manufacturer for applications indicated.
- B. Adhesives: Water-resistant type recommended by flooring and adhesive manufacturers to suit resilient plank flooring and substrate conditions indicated.
- C. Floor Polish: Provide protective, liquid floor-polish products recommended by resilient plank flooring manufacturer.

### PART 3 - EXECUTION

#### 3.1 EXAMINATION

- A. Examine substrates, with Installer present, for compliance with requirements for maximum moisture content and other conditions affecting performance of the Work.
  - 1. Verify that finishes of substrates comply with tolerances and other requirements specified in other Sections and that substrates are free of cracks, ridges, depressions, scale, and foreign deposits that might interfere with adhesion of resilient plank flooring.
- B. Proceed with installation only after unsatisfactory conditions have been corrected.

#### 3.2 PREPARATION

- A. Prepare substrates according to plank flooring manufacturer's written instructions to ensure adhesion of resilient plank flooring.
- B. Concrete Substrates: Prepare according to ASTM F 710.
  - 1. Verify that substrates are dry and free of curing compounds, sealers, and hardeners.
  - 2. Remove substrate coatings and other substances that are incompatible with adhesives and that contain soap, wax, oil, or silicone, using mechanical methods recommended by resilient plank flooring manufacturer. Do not use solvents.
- C. Fill cracks, holes, and depressions in substrates with trowelable leveling and patching compound; remove bumps and ridges to produce a uniform and smooth substrate.
- D. Do not install resilient plank flooring until it is the same temperature as the space where it is to be installed.
  - 1. At least 48 hours in advance of installation, move flooring and installation materials into spaces where they will be installed.
- E. Immediately before installation, sweep and vacuum clean substrates to be covered by resilient plank flooring.

#### 3.3 RESILIENT PLANK FLOORING INSTALLATION

- A. Comply with manufacturer's written instructions for installing resilient plank flooring.
- B. Running bond pattern.
- C. Scribe and cut resilient plank flooring to butt neatly and tightly to vertical surfaces, permanent fixtures, and built-in furniture including cabinets, pipes, outlets, and door frames.
- D. Extend resilient plank flooring into toe spaces, door reveals, closets, and similar openings.
- E. Maintain reference markers, holes, and openings that are in place or marked for future cutting by repeating on resilient plank flooring as marked on substrates. Use chalk or other nonpermanent marking device.

- F. Adhere resilient plank flooring to substrates using a full spread of adhesive applied to substrate to produce a completed installation without open cracks, voids, raising and puckering at joints, telegraphing of adhesive spreader marks, and other surface imperfections.

#### 3.4 CLEANING AND PROTECTION

- A. Comply with manufacturer's written instructions for cleaning and protecting resilient plank flooring.
- B. Perform the following operations immediately after completing resilient plank flooring installation:
  - 1. Remove adhesive and other blemishes from surfaces.
  - 2. Sweep and vacuum surfaces thoroughly.
  - 3. Damp-mop surfaces to remove marks and soil.
- C. Protect resilient plank flooring from mars, marks, indentations, and other damage from construction operations and placement of equipment and fixtures during remainder of construction period.
- D. Cover resilient plank flooring until Substantial Completion.

END OF SECTION 096516

## SECTION 096519 - RESILIENT TILE FLOORING

### PART 1 - GENERAL

#### 1.1 RELATED DOCUMENTS

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

#### 1.2 SUMMARY

- A. Section Includes:

- 1. Rubber floor tile.

- B. Related Requirements:

- 1. Section 096513 "Resilient Base and Accessories" for resilient base, reducer strips, and other accessories installed with resilient floor coverings.

#### 1.3 ACTION SUBMITTALS

- A. Product Data: For each type of product indicated.
- B. Shop Drawings: For each type of floor tile. Include floor tile layouts, edges, columns, doorways, enclosing partitions, built-in furniture, cabinets, and cutouts. Show details of special patterns.
- C. Samples for Initial Selection: For each type of floor tile indicated.
- D. Product Schedule: For floor tile. Use same designations indicated on Drawings.

#### 1.4 INFORMATIONAL SUBMITTALS

- A. Qualification Data: For qualified Installer.

#### 1.5 CLOSEOUT SUBMITTALS

- A. Maintenance Data: For each type of floor tile to include in maintenance manuals.

#### 1.6 MATERIALS MAINTENANCE SUBMITTALS

- A. Furnish extra materials that match products installed and that are packaged with protective covering for storage and identified with labels describing contents.

- 1. Floor Tile: Furnish 1 box for every 50 boxes or fraction thereof, of each type, color, and pattern of floor tile installed.

#### 1.7 QUALITY ASSURANCE

- A. Installer Qualifications: A qualified installer who employs workers for this Project who are competent in techniques required by manufacturer for floor tile installation indicated.

- 1. Engage an installer who employs workers for this Project who are trained or certified by manufacturer for installation techniques required.



- B. Fire-Test-Response Characteristics: As determined by testing identical products according to ASTM E 648 or NFPA 253 by a qualified testing agency.

- 1. Critical Radiant Flux Classification: Class I, not less than 0.45 W/sq. cm.

## 1.8 DELIVERY, STORAGE, AND HANDLING

- A. Store floor tile and installation materials in dry spaces protected from the weather, with ambient temperatures maintained within range recommended by manufacturer, but not less than 50 deg F (10 deg C) or more than 90 deg F (32 deg C). Store floor tiles on flat surfaces.

## 1.9 PROJECT CONDITIONS

- A. Maintain ambient temperatures within range recommended by manufacturer, but not less than 70 deg F (21 deg C) or more than 95 deg F (35 deg C), in spaces to receive floor tile during the following time periods:
  - 1. 48 hours before installation.
  - 2. During installation.
  - 3. 48 hours after installation.
- B. Until Substantial Completion, maintain ambient temperatures within range recommended by manufacturer, but not less than 55 deg F (13 deg C) or more than 95 deg F (35 deg C).
- C. Close spaces to traffic during floor tile installation.
- D. Close spaces to traffic for 48 hours after floor tile installation.
- E. Install floor tile after other finishing operations, including painting, have been completed.

## PART 2 - PRODUCTS

### 2.1 RUBBER FLOOR TILE

- A. Products: Subject to compliance with requirements, provide the following:
  - 1. Nora Rubber Flooring, Freudenberg Building Systems, Inc.; Grano
- B. Tile Standard: ASTM F 1344, Class I-B, homogeneous rubber tile, through mottled.
- C. Hardness: Not less than 85 as required by ASTM F 1344, measured using Shore, Type A durometer per ASTM D 2240.
- D. Thickness: 3.5 mm.
- E. Size: 39.53 by 39.53 inches.
- F. Seaming Method: Standard.
- G. Color: Frankincense #5303.

### 2.2 INSTALLATION MATERIALS

- A. Trowelable Leveling and Patching Compounds: Latex-modified, portland cement based or

blended hydraulic-cement-based formulation provided or approved by manufacturer for applications indicated.

- B. Adhesives: As recommended by manufacturer.

## 2.3 DOUBLE SIDED TAPE

- A. Provide Nora Dryfix 750 tape.
  - 1. Size: 29.5 inches by 98.5 feet (75 cm by 30 m).

## PART 3 - EXECUTION

### 3.1 EXAMINATION

- A. Examine substrates, with Installer present, for compliance with requirements for maximum moisture content and other conditions affecting performance of the Work.
- B. Verify that finishes of substrates comply with tolerances and other requirements specified in other Sections and that substrates are free of cracks, ridges, depressions, scale, and foreign deposits that might interfere with adhesion of floor tile.
- C. Proceed with installation only after unsatisfactory conditions have been corrected.

### 3.2 PREPARATION

- A. Prepare substrates according to manufacturer's written instructions to ensure adhesion of resilient products.
- B. Concrete Substrates: Prepare according to ASTM F 710.
  - 1. Verify that substrates are dry and free of curing compounds, sealers, and hardeners.
  - 2. Remove substrate coatings and other substances that are incompatible with adhesives and that contain soap, wax, oil, or silicone, using mechanical methods recommended by manufacturer. Do not use solvents.
  - 3. Alkalinity and Adhesion Testing: Perform tests recommended by manufacturer. Proceed with installation only after substrates pass testing.
  - 4. Moisture Testing: Perform tests recommended by manufacturer and as follows. Proceed with installation only after substrates pass testing.
    - a. Perform anhydrous calcium chloride test, ASTM F 1869. Proceed with installation only after substrates have maximum moisture-vapor-emission rate of 3 lb of water/1000 sq. ft. (1.36 kg of water/92.9 sq. m) in 24 hours.
    - b. Perform relative humidity test using in situ probes, ASTM F 2170. Proceed with installation only after substrates have a maximum 75% relative humidity level measurement.
- C. Fill cracks, holes, and depressions in substrates with trowelable leveling and patching compound and remove bumps and ridges to produce a uniform and smooth substrate.
- D. Do not install floor tiles until they are same temperature as space where they are to be installed.

1. Move resilient products and installation materials into spaces where they will be installed at least 48 hours in advance of installation.
- E. Sweep and vacuum clean substrates to be covered by resilient products immediately before installation.

### 3.3 FLOOR TILE INSTALLATION

- A. Comply with manufacturer's written instructions for installing floor tile.
- B. Lay out floor tiles from center marks established with principal walls, discounting minor offsets, so tiles at opposite edges of room are of equal width. Adjust as necessary to avoid using cut widths that equal less than one-half tile at perimeter.
  1. Lay tiles square with room axis in pattern indicated. Lay in running bond pattern so that four corners never join.
- C. Match floor tiles for color and pattern by selecting tiles from cartons in the same sequence as manufactured and packaged, if so numbered. Discard broken, cracked, chipped, or deformed tiles.
  1. Lay tiles with grain running in one direction.
- D. Scribe, cut, and fit floor tiles to butt neatly and tightly to vertical surfaces and permanent fixtures including built-in furniture, cabinets, pipes, outlets, and door frames.
- E. Extend floor tiles into toe spaces, door reveals, closets, and similar openings. Extend floor tiles to center of door openings.
- F. Maintain reference markers, holes, and openings that are in place or marked for future cutting by repeating on floor tiles as marked on substrates. Use chalk or other nonpermanent, non-staining marking device.
- G. Adhere floor tiles to substrate using manufacturer-recommended double-side tape.
  1. Vacuum substrate to remove all loose debris.
  2. Unroll tape and place into position, overlapping all seams ½-inch minimum.
  3. Lightly press into place using a steel trowel, stiff bristled broom, or similar.
  4. After 15 minutes, cut away excess tape and wax paper at seams.
  5. Remove and replace any tape that has trash or debris trapped underneath.
  6. If chalk lines are required for flooring, place chalk lines on wax paper to avoid contaminating the tape.
  7. Dryfit flooring over entire room.
  8. Remove tiles and vacuum back of tiles and top of wax paper.
  9. Remove wax paper, folding or rolling as work progresses.
  10. Install floor tiles on exposed tape.
  11. Use 100-150 3-section roller to remove any air bubbles in flooring and ensure good bond.

### 3.4 CLEANING AND PROTECTION

- A. Comply with manufacturer's written instructions for cleaning and protection of floor tile.
- B. Perform the following operations immediately after completing floor tile installation:
  1. Remove adhesive and other blemishes from exposed surfaces.

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2. Sweep and vacuum surfaces thoroughly.
  3. Damp-mop surfaces to remove marks and soil.
- C. Protect floor tile products from mars, marks, indentations, and other damage from construction operations and placement of equipment and fixtures during remainder of construction period.
- D. Cover floor tile until Substantial Completion.

END OF SECTION 096519