

**CITY OF BURLINGTON  
NOTICE TO BIDDERS  
WILLIAM R. ALLEN SCHOOL  
RESTORATION PROJECT  
January 3, 2025**

Sealed bids will be received by the City of Burlington on **Thursday, January 30, 2025, at 4:00 pm** at City Hall, 525 High Street, Burlington, New Jersey, for the William R. Allen School R. Allen School Restoration project.

Plans, Specifications, Forms of Bid and the Project Manual for the proposed project may be obtained from Margaret M. Hickey, AIA, Connolly & Hickey Historical Architects at Margaret@chhistoricalarchitects.com. Bid documents are to be distributed to prospective bidders electronically. Interested bidders must contact Ms. Hickey to request PDF copies of the bid specifications and drawings. All requests must include the following information: Company Name and Address; Contact Name; Contact Email Address; Company Phone Number; and Contact Phone Number. Requests must be emailed to Ms. Hickey at Margaret@chhistoricalarchitects.com. There is no cost for the bid documents. Or bid documents and the and the project manual may be obtained by opening the following links:

Drawings - [https://www.dropbox.com/scl/fi/07ir9enc6x0fdz1q8xmen/William-Allen-School\\_DRAWINGS.pdf?rlkey=fwynh5to4d4e1bvnygm6bev5&dl=0](https://www.dropbox.com/scl/fi/07ir9enc6x0fdz1q8xmen/William-Allen-School_DRAWINGS.pdf?rlkey=fwynh5to4d4e1bvnygm6bev5&dl=0)

Project manual - [https://www.dropbox.com/scl/fi/n7fbphp6jmvz4svs9xeik/William-Allen-School\\_PROJECT-MANUAL.pdf?rlkey=u723bjasub2inuv1feubh00vr&dl=0](https://www.dropbox.com/scl/fi/n7fbphp6jmvz4svs9xeik/William-Allen-School_PROJECT-MANUAL.pdf?rlkey=u723bjasub2inuv1feubh00vr&dl=0).

A hard copy of the specs and drawings is available for review at the Department of Community Development, City Hall at 525 High Street, Burlington, NJ 08016, on the City's website at [www.burlingtonnj.us](http://www.burlingtonnj.us) under the "Bids/RFPs" icon and at the offices of HMR Architects at Connolly & Hickey Historical Architects, 1 S. Union Avenue, Cranford, NJ 07016

A pre-bid walkthrough is scheduled for **Monday, January 13, 2025, at 10:00 AM**. While attendance is not mandatory at this meeting, it is the responsibility of the Bidder to be familiar with all site conditions and attendance is strongly recommended.

**THIS BID REQUIRES SATISFACTION OF QUALIFICATIONS INDICATING THAT THE GENERAL CONTRACTOR HAS COMPLETED PROJECTS OF A SIMILAR SCOPE ON HISTORIC BUILDINGS. FAILURE TO MEET THE QUALIFICATIONS CONTAINED WITHIN WILL RESULT IN DISQUALIFICATION OF THE PROSPECTIVE BIDDER.**

Bids must be made on the standard proposal form in the manner designated therein and required by the Specifications, must be enclosed in the sealed envelopes bearing the name of the job and address of the bidder on the outside, addressed to William Harris, Director of Housing & Community Development, City Hall, 525 High Street, Burlington, NJ 08016, and clearly marked on the outside "**William R. Allen School R. Allen School Restoration project.**"

IT SHOULD BE FURTHER STATED THAT a portion of the construction cost is being

funded by an African-American Civil Rights grant from the U.S. Department of the Interior-National Park Service. Such funding requires the bidder for this project to comply with Executive Order 11246.

The Mayor and Common Council of the City of Burlington reserves the right to reject any or all bids, to waive any informalities in the proposal received and to accept the bid which in their judgment will best serve the interest of the City.

Bidders are required to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27 et. seq.

BY ORDER OF THE MAYOR AND C O M M O N COUNCIL OF THE  
CITY OF B U R L I N G T O N , NEW JERSEY.

Cindy A. Crivaro, RMC  
City Clerk

**CITY OF BURLINGTON**  
**BID DOCUMENT CHECKLIST\***

Required by owner	Submission Requirement	Initial each required entry and if required submit the item
<input type="checkbox"/>	Stockholder Disclosure Certification	
<input type="checkbox"/>	Non-Collusion Affidavit	
<input type="checkbox"/>	Bid Proposal Form	
<input type="checkbox"/>	References	
<input type="checkbox"/>	Status of Present Contracts	
<input type="checkbox"/>	Equipment Certification	
<input type="checkbox"/>	Bid Guarantee (with Power of Attorney for full amount of <i>Bid Bond</i> )	
<input type="checkbox"/>	Public Works Contractor Certificate	
<input type="checkbox"/>	Consent of Surety (with Power of Attorney for full amount of Bid Price)	
<input type="checkbox"/>	Mandatory Affirmative Action Language	
<input type="checkbox"/>	Prevailing Wage	
<input type="checkbox"/>	Americans with Disabilities Act of 1990 Language	
<input type="checkbox"/>	Proof of Business Registration	

\*This form need not be submitted. It is provided for bidder's use in assuring compliance with all required documentation.

CITY OF BURLINGTON

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

The undersigned Bidder hereby acknowledges receipt of the following Addenda:

<u>Addendum Number</u>	<u>Dated</u>	<u>Acknowledge Receipt</u> (initial)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

No addenda were received.

Acknowledged for: \_\_\_\_\_  
(Name of Bidder)

By: \_\_\_\_\_  
(Signature of Authorized Representative)

Name: \_\_\_\_\_  
(Print or Type)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**STATEMENT OF OWNERSHIP DISCLOSURE**

N.J.S.A. 52:25-24.2 (P.L. 1977, c.33, as amended by P.L. 2016, c.43)

This statement shall be completed, certified to, and included with all bid and proposal submissions. Failure to submit the required information is cause for automatic rejection of the bid or proposal.

**Name of Organization:** \_\_\_\_\_

**Organization Address:** \_\_\_\_\_

**Part I Check the box that represents the type of business organization:**

- Sole Proprietorship (skip Parts II and III, execute certification in Part IV)
- Non-Profit Corporation (skip Parts II and III, execute certification in Part IV)
- For-Profit Corporation (any type)     Limited Liability Company (LLC)
- Partnership     Limited Partnership     Limited Liability Partnership (LLP)
- Other (be specific): \_\_\_\_\_

**Part II**

- The list below contains the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. **(COMPLETE THE LIST BELOW IN THIS SECTION)**
- OR**
- No one stockholder in the corporation owns 10 percent or more of its stock, of any class, or no individual partner in the partnership owns a 10 percent or greater interest therein, or no member in the limited liability company owns a 10 percent or greater interest therein, as the case may be. **(SKIP TO PART IV)**

(Please attach additional sheets if more space is needed):

Name of Individual or Business Entity	Home Address (for Individuals) or Business Address

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**Part III DISCLOSURE OF 10% OR GREATER OWNERSHIP IN THE STOCKHOLDERS, PARTNERS OR LLC MEMBERS LISTED IN PART II**

If a bidder has a direct or indirect parent entity which is publicly traded, and any person holds a 10 percent or greater beneficial interest in the publicly traded parent entity as of the last annual federal Security and Exchange Commission (SEC) or foreign equivalent filing, ownership disclosure can be met by providing links to the website(s) containing the last annual filing(s) with the federal Securities and Exchange Commission (or foreign equivalent) that contain the name and address of each person holding a 10% or greater beneficial interest in the publicly traded parent entity, along with the relevant page numbers of the filing(s) that contain the information on each such person. **Attach additional sheets if more space is needed.**

Website (URL) containing the last annual SEC (or foreign equivalent) filing	Page #'s

Please list the names and addresses of each stockholder, partner or member owning a 10 percent or greater interest in any corresponding corporation, partnership and/or limited liability company (LLC) listed in Part II **other than for any publicly traded parent entities referenced above.** The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member exceeding the 10 percent ownership criteria established pursuant to N.J.S.A. 52:25-24.2 has been listed. **Attach additional sheets if more space is needed.**

Stockholder/Partner/Member and Corresponding Entity Listed in Part II	Home Address (for Individuals) or Business Address

**Part IV Certification**

I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge: that I am authorized to execute this certification on behalf of the bidder/proposer; that the **<name of contracting unit>** is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with **<type of contracting unit>** to notify the **<type of contracting unit>** in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the, permitting the **<type of contracting unit>** to declare any contract(s) resulting from this certification void and unenforceable.

Restoration and Rehabilitation  
William R. Allen School, Burlington,  
Burlington County, New Jersey  
Architect's Project No.: 2016C

Full Name (Print):		Title:	
Signature:		Date:	

**NON-COLLUSION AFFIDAVIT**

State of New Jersey  
County of \_\_\_\_\_

ss:

I, \_\_\_\_\_ residing in \_\_\_\_\_  
(name of affiant) (name of municipality)  
in the County of \_\_\_\_\_ and State of \_\_\_\_\_ of full age,  
being duly sworn according to law on my oath depose and say that:

I am \_\_\_\_\_ of the firm of \_\_\_\_\_  
(title or position) (name of firm)

\_\_\_\_\_ the bidder making this Proposal for the bid  
entitled \_\_\_\_\_, and that I executed the said proposal with  
(title of bid proposal)  
full authority to do so that said bidder has not, directly or indirectly entered into any agreement, participated  
in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the  
above named project; and that all statements contained in said proposal and in this affidavit are true and  
correct, and made with full knowledge that the \_\_\_\_\_ relies upon  
the truth of the statements contained in said Proposal  
(name of contracting unit)  
and in the statements contained in this affidavit in awarding the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such  
contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee,  
except bona fide employees or bona fide established commercial or selling agencies maintained by

\_\_\_\_\_.

Subscribed and sworn to

before me this day

\_\_\_\_\_  
Signature

\_\_\_\_\_, 2\_\_\_\_\_  
(Type or print name of affiant under signature)

\_\_\_\_\_  
Notary public of

My Commission expires \_\_\_\_\_

(Seal)



**EQUIPMENT CERTIFICATION**

The undersigned Bidder hereby certifies as follows:

The bidder owns or controls all the necessary equipment required to accomplish the work described in the specifications.

Name of Bidder: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name of above: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF BURLINGTON**

**BID PROPOSAL FORM**

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(Contract Title and Bid Number, if applicable)

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(Description of goods/services being bid)

The undersigned proposes to furnish and deliver the above goods/services pursuant to the bid specification and made part hereof:

**BASE BID**

- 1. GENERAL REQUIREMENTS ..... \$ \_\_\_\_\_
- 2. TEMPORARY FACILITIES ..... \$ \_\_\_\_\_
- 3. BUILDING ACCESS ..... \$ \_\_\_\_\_
- 4. DIVISION 2 – EXISTING CONDITIONS ..... \$ \_\_\_\_\_
- 5. DIVISION 3 – CONCRETE ..... \$ \_\_\_\_\_
- 6. DIVISION 4 – MASONRY ..... \$ \_\_\_\_\_
- 7. DIVISION 5 – METALS ..... \$ \_\_\_\_\_
- 8. DIVISION 6 – CARPENTRY ..... \$ \_\_\_\_\_
- 9. DIVISION 7 – THERMAL & MOISTURE PROTECTION ..... \$ \_\_\_\_\_
- 10. DIVISION 8 – OPENINGS (Doors and Windows) ..... \$ \_\_\_\_\_
- 11. DIVISION 9 – FINISHES ..... \$ \_\_\_\_\_
- 12. DIVISION 10 – SPECIALTIES ..... \$ \_\_\_\_\_
- 13. DIVISION 22 – PLUMBING ..... \$ \_\_\_\_\_
- 14. DIVISION 23 – HVAC ..... \$ \_\_\_\_\_
- 15. DIVISION 26 – ELECTRICAL ..... \$ \_\_\_\_\_
- 16. DIVISION 31 – EARTHWORK ..... \$ \_\_\_\_\_

BID PROPOSAL FORM

Restoration and Rehabilitation  
William R. Allen School, Burlington,  
Burlington County, New Jersey  
Architect's Project No.: 2016C

- 17. DIVISION 32 – EXTERIOR / SITE IMPROVEMENTS..... \$ \_\_\_\_\_
- 18. ALLOWANCES (By Drawings) ..... \$ \_\_\_\_\_
- 19. ALLOWANCE (Contingency) ..... \$ 12,000

TOTAL \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

The above amount may be modified by amounts indicated by the Bidder on the attached Document 004321 "Allowances", Document 004322 "Unit Prices Form" and Document 004323 "Alternates Form."

\_\_\_\_\_  
Amount in words

\$ \_\_\_\_\_  
Amount in numbers

BID ALTERNATES

- A. **DEDUCT:** Installation of new Commercial-Grade Kitchen as seen on Sheets A2, A19, M1.1, P1.0, P1.1, and E1.1, and E2.1.  

**DEDUCT Dollars (\$ \_\_\_\_\_).**
- B. **ADD:** Installation of new Catering Kitchen as seen on Sheet A20, P1.1A, and E2.3.  

**ADD Dollars (\$ \_\_\_\_\_).**

BID PROPOSAL FORM

Restoration and Rehabilitation  
William R. Allen School, Burlington,  
Burlington County, New Jersey  
Architect's Project No.: 2016C

BIDDER CERTIFICATION

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Federal I.D. # or Social Security #

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature of Authorized Agent

\_\_\_\_\_  
Type or Print Name

Title: \_\_\_\_\_

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
E-mail address

**DOCUMENT 004321 - ALLOWANCE FORM**

**1.1 BID INFORMATION**

- A. Bidder: \_\_\_\_\_.
- B. Project Name: Restoration and Rehabilitation of the William R. Allen School.
- C. Project Location: Mitchell Avenue, Burlington NJ 08016
- D. Owner: City of Burlington
- E. Architect: Connolly & Hickey Historical Architects, LLC
- F. Architect Project Number: 2016C

**1.2 BID FORM SUPPLEMENT**

- A. This form is required to be attached to the Bid Form.
- B. The undersigned Bidder certifies that Base Bid submission to which this Bid Supplement is attached includes those allowances described in the Contract Documents and scheduled in Section 012100 "Allowances."

**1.3 ALLOWANCES**

**A. FINISH CARPENTRY – WOOD COMPONENTS**

- 1. ALLOW FOR 5 SF OF DUTCHMAN/EPOXY REPAIR IN-KIND OF FINISH CARPENTRY COMPONENTS INCLUDING CORNICE, SOFFIT BOARDS, TRIM, AND COLUMN ELEMENTS THAN SHOWN ON DRAWINGS AND **PER** ELEVATION.

Dollars (\$ \_\_\_\_\_) per allowance.

- 2. ALLOW FOR 10% IN-KIND REPLACEMENT OF TREATED BOARD SLATS AT DECK AND RAMP.

Dollars (\$ \_\_\_\_\_) per allowance

**B. BRICK MASONRY**

- 1. ALLOW FOR 35 SF OF BRICK REPOINTING USING LIME-BASED REPOINTING MORTAR THAN INDICATED **PER** ELEVATION.

Dollars (\$ \_\_\_\_\_) per allowance.

ALLOWANCE FORM

Restoration and Rehabilitation  
William R. Allen School, Burlington,  
Burlington County, New Jersey  
Architect's Project No.: 2016C

2. ALLOW FOR 15 SF REPLACEMENT IN-KIND OF ERODED BRICK THAN INDICATED ON DRAWINGS PER ELEVATION.

Dollars (\$ \_\_\_\_\_ ) per allowance.

C. WINDOWS

1. ALLOW FOR TEN (10) ADDITIONAL GLASS PANE (±9' X 12") REPLACEMENTS IN-KIND USING RESTORATION GLASS. (IT IS THE CONTRACTOR'S RESPONSIBILITY TO USE CARE WHEN REMOVING GLAZING PUTTY SO THAT GLASS IS NOT BROKEN)

Dollars (\$ \_\_\_\_\_ ) per allowance

2. ALLOW FOR 3 CU. IN. OF EPOXY REPAIR PER WINDOW AND A TOTAL OF 30 LF OF WOOD DUTCHMAN REPAIR AT THE WINDOWS.

Dollars (\$ \_\_\_\_\_ ) per allowance

D. FINISH CARPENTRY / WINDOW AND DOOR TRIM/CASING

1. ALLOW FOR 25 L.F. OF IN-KIND REPLACEMENT OF MOLDED TRIM REPLACEMENT ABOVE WHAT IS INDICATED ON THE DRAWINGS (MINOR WOOD FILLING/EPOXY REPAIR AT CORNERS OF DOOR AND WINDOWS AND BETWEEN TRIM COMPONENTS IS PART OF BASE CONTRACT/SURFACE PREPARATION).

Dollars (\$ \_\_\_\_\_ ) per allowance

E. PLASTER RESTORATION

1. ALLOW FOR 50 SF OF IN-KIND METAL LATH AND THREE-COAT REPLICATION PLASTER REPAIR ABOVE WHAT IS INDICATED ON THE DRAWINGS (MAY NOT BE ALL IN ONE LOCATION).

Dollars (\$ \_\_\_\_\_ ) per allowance

2. ALLOW FOR 50 SF OF IN-KIND THREE-COAT REPLICATION PLASTER REPAIR WHERE METAL LATH IS IN-TACT ABOVE WHAT IS INDICATED ON THE DRAWINGS (MAY NOT BE ALL IN ONE LOCATION).

Dollars (\$ \_\_\_\_\_ ) per allowance

3. ALLOW FOR 65 LF OF PLASTER CRACK REPAIR INCLUDING CUTTING OUT PLASTER, STABILIZATION ON EITHER SIDE OF CRACK, AND REPAIR WITH REPLICATION PLASTER ABOVE WHAT IS INDICATED ON THE DRAWINGS

Dollars (\$ \_\_\_\_\_ ) per allowance

ALLOWANCE FORM

Restoration and Rehabilitation  
William R. Allen School, Burlington,  
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F. WOOD FLOOR RESTORATION

1. ALLOW FOR 35 SF OF IN-KIND WOOD FLOORING REPLACEMENT ABOVE WHAT IS INDICATED ON THE DRAWINGS (MAY NOT BE ALL IN ONE LOCATION AND MAY INCLUDE RANDOM BOARDS OF AT LEAST 3 FEET IN VARIOUS LOCATIONS)

Dollars (\$ \_\_\_\_\_) per allowance

1.4 SUBMISSION OF BID SUPPLEMENT

- A. Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2025.
- B. Submitted By: \_\_\_\_\_ (Insert name of bidding firm or corporation).
- C. Authorized Signature: \_\_\_\_\_ (Handwritten signature).
- D. Signed By: \_\_\_\_\_ (Type or print name).
- E. Title: \_\_\_\_\_ (Owner/Partner/President/Vice President).

END OF DOCUMENT 004321

UNIT PRICES FORM

Restoration and Rehabilitation  
William R. Allen School, Burlington,  
Burlington County, New Jersey  
Architect's Project No.: 2016C

**DOCUMENT 004322 - UNIT PRICES FORM**

1.1 BID INFORMATION

- A. Bidder: \_\_\_\_\_.
- B. Project Name: Restoration and Rehabilitation of the William R. Allen School,
- C. Project Location: Mitchell Avenue, Burlington NJ 08016
- D. Owner: The City of Burlington
- E. Architect: Connolly & Hickey Historical Architects, LLC
- F. Architect Project Number: 2016C

1.2 BID FORM SUPPLEMENT

- A. This form is required to be attached to the Bid Form.
- B. The undersigned Bidder proposes the amounts below be added to or deducted from the Contract Sum on performance and measurement of the individual items of Work and for adjustment of the quantity given in the General Allowance for the actual measurement of individual items of the Work.
- C. If the unit price does not affect the Work of this Contract, the Bidder shall indicate "NOT APPLICABLE."

1.3 UNIT PRICES

- A. In-kind replacement of molded trim (one board foot) at exterior cornice, soffit, etc.
  - 1. Dollars (\$ \_\_\_\_\_) per board foot.
- B. Treated vertical board boards at deck/ramp to match existing per board foot.
  - 1. Dollars (\$ \_\_\_\_\_) per board foot.
- C. Replacement of one (1) square foot of brick.
  - 1. Dollars (\$ \_\_\_\_\_) per unit.
- D. Repointing of one (1) square foot of brick.
  - 1. Dollars (\$ \_\_\_\_\_) per unit.
- E. Restoration glass (9" x 12) per piece of glass (includes installation).
  - 1. Dollars (\$ \_\_\_\_\_) per unit.
- F. Cubic inch of epoxy consolidation at window/door trim.



UNIT PRICES FORM

Restoration and Rehabilitation  
William R. Allen School, Burlington,  
Burlington County, New Jersey  
Architect's Project No.: 2016C

1. Dollars (\$ \_\_\_\_\_) per unit.
- G. One square foot of in-kind metal lath and replication plaster replacement.
  1. Dollars (\$ \_\_\_\_\_) per unit.
- H. One square foot of in-kind replication plaster replacement.
  1. Dollars (\$ \_\_\_\_\_) per unit.
- I. One linear foot of in-kind plaster crack repair with replication plaster.
  1. Dollars (\$ \_\_\_\_\_) per unit.
- J. One board foot of in-kind wood floor replacement.
  1. Dollars (\$ \_\_\_\_\_) per unit.

1.4 SUBMISSION OF BID SUPPLEMENT

- A. Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2025.
- B. Submitted By: \_\_\_\_\_ (Insert name of bidding firm or corporation).
- C. Authorized Signature: \_\_\_\_\_ (Handwritten signature).
- D. Signed By: \_\_\_\_\_ (Type or print name).
- E. Title: \_\_\_\_\_ (Owner/Partner/President/Vice President).

END OF DOCUMENT 004322

**BIDDER'S PREQUALIFICATION PACKAGE**  
**(TO BE SUBMITTED WITH BID PACKAGE)**

**RESTORATION AND REHABILITATION**

**OF THE**

**WILLIAM ALLEN HOUSE**

**Burlington City,  
Burlington County, New Jersey**

**CITY OF BURLINGTON, OWNER**

**525 High Street  
Burlington, New Jersey 08016**

**CONNOLLY & HICKEY  
HISTORICAL ARCHITECTS, LLC  
P.O. Box 1726  
Cranford, New Jersey 07016**

**DATE: 17 October 2023**

**ISSUED FOR BID: 16 DECEMBER 2024**

**RESTORATION AND REHABILITATION OF THE  
WILLIAM ALLEN HOUSE**

**PROJECT FACT SHEET**

- Project:** RESTORATION AND REHABILITATION OF THE WILLIAM ALLEN HOUSE
- Location:** Burlington City,  
Burlington County, New Jersey
- Local Unit** City of Burlington  
525 High Street  
Burlington, New Jersey 08016
- Local Unit Contact:** William Harris, Department of Housing & Community Development  
(609)-386-0214
- Architect:** Connolly & Hickey Historical Architects, LLC  
Thomas B. Connolly, AIA, Principal Architect  
P.O. Box 1726  
Cranford, New Jersey 07016  
973-746-4911 (tel)  
973-746-2080 (fax)
- Background Information:** The William R. Allen school was constructed in 1900 to educate the Black children of the City of Burlington and survives today as a physical embodiment of segregation in southern New Jersey. The earliest organized education for Black children in Burlington occurred in a private home in 1812 and a small wood-frame school on Wood Street was also used following the Civil War. In 1870, a larger wood-frame school was built on Federal Street, but it was distinct from the City's other schools in the way it was funded and managed. In 1900, the William R. Allen School was constructed as a two-room brick schoolhouse to replace the 1870 wood-frame school. With the school's enrollment growing in response to the Great Migration of southern Black families to northern cities, a third classroom was added 1914 and in 1924, a large addition was constructed that doubled the size of the school. The city purchased the building from the Board of Education in 1975 and leased it to the County for use as a learning skills center. The building has been vacant since 1984. The building was listed on the New Jersey and National Registers of Historic Places.
- Project Objective:** The City of Burlington seeks experienced Historic Restoration General Contractors who specialize in selective demolition of historic finishes, masonry restoration, window and door restoration, wood framing, plaster, and finish carpentry restoration, structural repair of historic framing, sensitive insertion of new mechanical, electrical, and plumbing system into historic fabric, and surface preparation and painting.
- Project Funding:** Preserve New Jersey Historic Preservation Trust Fund, the National Park Service through African American Civil Rights Grant program, the New Jersey Department of Community Affair through Small Cities Community Development Block Grant Program, and City of Burlington

**RESTORATION AND REHABILITATION OF THE  
WILLIAM ALLEN HOUSE**

**Scope of Work:**

The project consists of the following elements (refer to Bid and Contract Documents provided):

1. Selective demolition of historic finishes;
2. Brick masonry restoration and repointing;
3. Restoration of windows;
4. Restoration of door;
5. Interior restoration of interior finishes including wood flooring, plaster and finish carpentry;
6. Exterior restoration of finish carpentry element such as window and door surrounds and cornices;
7. Sensitive Installation of new mechanical, electrical and plumbing system into historic fabric surfaces; and
8. Surface preparation and painting of interior and exterior painted historic surfaces.

**PREQUALIFICATION REGULATIONS  
RESTORATION AND REHABILITATION OF THE  
WILLIAM ALLEN HOUSE**

STATEMENT OF GENERAL NOTICE:

William Allen School is in Burlington City, Burlington County, New Jersey. All work done on this project must conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties (Revised 1995) and is subject to review by the New Jersey Historic Preservation Office and the County of Morris. The City of Burlington shall award a contract to only experienced Historic Restoration General Contractors who specialize or who have subcontractors who specialize in selective demolition of historic finishes, masonry restoration, window and door restoration, wood framing, plaster, and finish carpentry restoration, structural repair of historic framing, sensitive insertion of new mechanical, electrical, and plumbing system into historic fabric, and surface preparation and painting.

The scope of the work for this single contract is primarily for:

1. Selective demolition of historic finishes;
2. Brick masonry restoration and repointing;
3. Restoration of windows;
4. Restoration of door;
5. Interior restoration of interior finishes including wood flooring, plaster and finish carpentry;
6. Exterior restoration of finish carpentry element such as window and door surrounds and cornices;
7. Sensitive Installation of new mechanical, electrical and plumbing system into historic fabric surfaces; and
8. Surface preparation and painting of interior and exterior painted historic surfaces.

This work will be in accordance with the project bidding documents. The Architect is Connolly & Hickey Historical Architects, LLC, P.O. Box 1726, Cranford, New Jersey 07016, telephone (973) 746-4911. The Owner contact is William Harris, Department of Housing & Community Development, telephone (609)-386-0200 ext. 103 or email at [wharris@burlingtonnj.us](mailto:wharris@burlingtonnj.us). A fact sheet describing the project and scope of work is attached. All prospective bidders are strongly encouraged to visit the site.

The City of Burlington requires that prospective bidders must submit a completed Qualifications Statement as set forth herein. Failure to complete the Qualifications Statement may result in disqualification from bidding. All entries on the forms must be completely filled in. Complete Qualifications Statement Forms must be submitted with the bid documents. The City of Burlington, the New Jersey Historic Trust, and the Project Architect will review the Qualifications Statement Forms according to the Evaluation Criteria set forth herein. Historic Restoration General Contractors whose Qualification Statements are determined to be acceptable will be identified as Qualified Prospective Bidders and their bid documents will be considered.

**PREQUALIFICATION REGULATIONS  
RESTORATION AND REHABILITATION OF THE  
WILLIAM ALLEN HOUSE**

STATEMENT OF POTENTIAL BIDDERS' QUALIFICATIONS/CRITERIA FOR EVALUATION

The following six (6) criteria will be used for evaluating the qualifications of Potential Bidders. The evaluation will be based on information in the Qualification Statement provided by Prospective Bidders as well as information supplied by the Bidders' references.

1. The Potential Bidder, acting as General Contractor, will be required to demonstrate verifiable, successful experience in Project Supervision and Administration of historic preservation projects. This experience shall include at least two (2) projects involving separate historic buildings or sites and of similar activities, construction value and scope of work as the subject project completed in compliance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (revised 1995) within the past five (5) years preceding the date of execution of this pre-qualification form. At least one (1) of the projects must have been reviewed by the State Historic Preservation Office, the New Jersey Historic Trust or the historic review body of a county or municipal authority. The aggregate construction costs of each project must be at least \$373,125.
2. The Potential Bidder's proposed project supervisor will be required to demonstrate verifiable, successful experience in Project Supervision and Administration of historic preservation projects. This experience shall include at least (2) two projects involving separate historic buildings or sites and of similar activities, construction value and scope of work as the subject project. These projects shall have been in compliance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (Revised 1995) within the past five (5) years preceding the date of execution of this pre-qualification form. At least one of the projects must have been reviewed by a State Historic Preservation Officer, the New Jersey Historic Trust or the historic review body of a county or municipal authority. The aggregate construction costs of each project must be at least \$373,125.
3. The Potential Bidder must provide a list of the names, titles and years of experience of all principal members of the potential bidder's staff who will be available and assigned to this particular project.
4. The Potential Bidder's firm or any predecessor firm must have not wrongfully defaulted on a contract or had work terminated for non-performance within the past five (5) years.
5. The Potential Bidder's firm or any predecessor firm must not have been denied a consent of surety, a bid guarantee or a performance bond within the past twelve (12) months based on the Potential Bidder's inability to meet the surety's reasonable underwriting standards.
6. On all projects currently underway, the prospective bidder must demonstrate the following:
  - a. Adherence to the project completion schedule mutually agreed upon between the contractor and the client. Deviation from the schedule must be due to factors outside of the contractor's control.
  - b. Lack of workmanship defects resulting from a failure to build a structure or component part of a structure pursuant to architectural and engineering plans and specifications.
  - c. Timely submittal of shop drawings, product literature, samples, mock-ups, requests for information and applications for payment.

**PREQUALIFICATION REGULATIONS  
RESTORATION AND REHABILITATION OF THE  
WILLIAM ALLEN HOUSE**

**Potential Bidder's Qualification Statement**

This form must be completed and submitted by Prospective Bidders who wish to be considered for this work. Failure to complete the Qualification Statement may result in disqualification of the Prospective Bidder. Attachments to this sheet are acceptable. Please properly label all attachments.

1. Name and Address of Firm: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

A. Under what other name(s) has your business operated? \_\_\_\_\_  
 \_\_\_\_\_

B. Business form (corporation, partnership, etc.) : \_\_\_\_\_

Date of formation: \_\_\_\_\_

Principal location: \_\_\_\_\_

Names of Officers of Corporation, or Partners: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

2. Provide a list of names, titles and years of experience of all principal members of the potential bidder's staff who will be available and assigned to this particular project. Please properly label that attachment.

3. Has your firm or any predecessor firm defaulted on a contract or had work terminated for non-performance within the last five (5) years? If so, on a separate sheet, describe the project, owner, date and circumstances/reasons.

4. Has your firm or any predecessor firm been denied a consent of surety, bid guarantee or performance bond within the last twelve (12) months based on potential bidder's inability to meet the surety's reasonable underwriting standards. If so, on a separate sheet, describe the circumstances/reasons.

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5. **General Contractor**

Provide evidence of successful experience on two (2) projects involving separate historic buildings or sites and of similar activities and scope of work as the subject project completed in compliance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (Revised 1995) within the past five (5) years preceding the date of the execution of this pre-qualification form. At least one of the projects must have been reviewed by a State Historic Preservation Office, the New Jersey Historic Trust or the historic review body of a county or municipal authority. Each project must have an aggregate construction value of at least \$373,125.

**Project One**

Project Name: \_\_\_\_\_

Location: \_\_\_\_\_

Construction Cost: \_\_\_\_\_

Completion Date: \_\_\_\_\_

Approximate Construction Date of Historic Building or Site: \_\_\_\_\_

Project Supervisor: \_\_\_\_\_

Scope of Work and Nature of Project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Owner: \_\_\_\_\_

Owner's Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Architect: \_\_\_\_\_

Architect's Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Historic Review Agency: \_\_\_\_\_



**PREQUALIFICATION REGULATIONS  
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**Project Two**

Project Name: \_\_\_\_\_

Location: \_\_\_\_\_

Construction Cost: \_\_\_\_\_

Completion Date: \_\_\_\_\_

Approximate Construction Date of Historic Building or Site: \_\_\_\_\_

Project Supervisor: \_\_\_\_\_

Scope of Work and Nature of Project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Owner: \_\_\_\_\_

Owner's Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Architect: \_\_\_\_\_

Architect's Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Historic Review Agency: \_\_\_\_\_

PREQUALIFICATION REGULATIONS  
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6. **Proposed Project Supervisor**

Provide evidence of successful experience on two (2) projects involving separate historic buildings or sites and of similar activities and scope of work as the subject project completed in compliance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (Revised 1995) within the past five (5) years preceding the date of the execution of this pre-qualification form. At least one of the projects must have been reviewed by a State Historic Preservation Office, the New Jersey Historic Trust or the historic review body of a county or municipal authority. Each project must have an aggregate construction value of at least \$373,125.

**Name and Address of Project Supervisor** who worked on the following two projects that meet the above requirements: \_\_\_\_\_  
\_\_\_\_\_

**Years of Experience** \_\_\_\_\_

**With Whom** \_\_\_\_\_

**Project One**

Project Name: \_\_\_\_\_

Location: \_\_\_\_\_

Construction Cost: \_\_\_\_\_

Completion Date: \_\_\_\_\_

Approximate Construction Date of Historic Building or Site: \_\_\_\_\_

Scope of Work and Nature of Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Owner: \_\_\_\_\_

Owner's Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Architect: \_\_\_\_\_

Architect's Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Historic Review Agency: \_\_\_\_\_

**PREQUALIFICATION REGULATIONS  
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**Project Two**

Project Name: \_\_\_\_\_

Location: \_\_\_\_\_

Construction Cost: \_\_\_\_\_

Completion Date: \_\_\_\_\_

Approximate Construction Date of Historic Building or Site: \_\_\_\_\_

Scope of Work and Nature of Project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Owner: \_\_\_\_\_

Owner's Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Architect: \_\_\_\_\_

Architect's Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Historic Review Agency: \_\_\_\_\_

**PREQUALIFICATION REGULATIONS  
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**7. General Contractor**

Provide the following information on all current projects in progress:

**Project Name:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**Owner:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Owner's Contact Person** \_\_\_\_\_ **Phone/Fax:** \_\_\_\_\_

**Architect:** \_\_\_\_\_ **Phone/Fax:** \_\_\_\_\_

**Contract Amount:** \_\_\_\_\_

**Scheduled Completion Date:** \_\_\_\_\_

**Architect's Contact Person:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**Owner:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Owner's Contact Person** \_\_\_\_\_ **Phone/Fax:** \_\_\_\_\_

**Architect:** \_\_\_\_\_ **Phone/Fax:** \_\_\_\_\_

**Contract Amount:** \_\_\_\_\_

**Scheduled Completion Date:** \_\_\_\_\_

**Architect's Contact Person:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

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**Project Name:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**Owner:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Owner's Contact Person** \_\_\_\_\_ **Phone/Fax:** \_\_\_\_\_

**Architect:** \_\_\_\_\_ **Phone/Fax:** \_\_\_\_\_

**Contract Amount:** \_\_\_\_\_

**Scheduled Completion Date:** \_\_\_\_\_

**Architect's Contact Person:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**Owner:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Owner's Contact Person** \_\_\_\_\_ **Phone/Fax:** \_\_\_\_\_

**Architect:** \_\_\_\_\_ **Phone/Fax:** \_\_\_\_\_

**Contract Amount:** \_\_\_\_\_

**Scheduled Completion Date:** \_\_\_\_\_

**Architect's Contact Person:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**PREQUALIFICATION REGULATIONS  
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**Project Name:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**Owner:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Owner's Contact Person** \_\_\_\_\_ **Phone/Fax:** \_\_\_\_\_

**Architect:** \_\_\_\_\_ **Phone/Fax:** \_\_\_\_\_

**Contract Amount:** \_\_\_\_\_

**Scheduled Completion Date:** \_\_\_\_\_

**Architect's Contact Person:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**Owner:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Owner's Contact Person** \_\_\_\_\_ **Phone/Fax:** \_\_\_\_\_

**Architect:** \_\_\_\_\_ **Phone/Fax:** \_\_\_\_\_

**Contract Amount:** \_\_\_\_\_

**Scheduled Completion Date:** \_\_\_\_\_

**Architect's Contact Person:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**PREQUALIFICATION REGULATIONS  
RESTORATION AND REHABILITATION OF THE  
WILLIAM ALLEN HOUSE**

**CERTIFICATION**

I (We) the undersigned certify the truth and correctness of all statements and answers contained herein:

DATE: \_\_\_\_\_

NAME OF POTENTIAL BIDDER: \_\_\_\_\_

ADDRESS OF POTENTIAL  
BIDDER: \_\_\_\_\_  
\_\_\_\_\_

TELEPHONE AND FAX: \_\_\_\_\_

BY (Sign name, no stamps): \_\_\_\_\_

Print/Type Name and Title: \_\_\_\_\_

WITNESSED (If a Corporation, by the Secretary of the Corporation)

BY (Sign name, no stamps): \_\_\_\_\_

Print/Type Name and Title: \_\_\_\_\_

Subscribed and sworn before me  
This \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public of the

State of \_\_\_\_\_

My Commission expires  
\_\_\_\_\_

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

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that for the value received we, the undersigned,

\_\_\_\_\_

(Name of Principal)

as PRINCIPAL, and \_\_\_\_\_

(Name of Surety)

as SURETY, are held and firmly bound unto the CITY OF BURLINGTON, IN THE COUNTY OF BURLINGTON, hereinafter called the "Owner" in the penal sum of \_\_\_\_\_ DOLLARS, (the penal sum shall be equal to ten percent [10%] of the Base Bid, but not more than \$20,000) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH, that whereas the Principal has submitted to the CITY OF BURLINGTON, IN THE COUNTY OF BURLINGTON, New Jersey, the accompanying Bid, if a Contract for which the aforesaid accompanying Bid is submitted shall be awarded to the Principal and the Principal shall within ten (10) days after submission to the Principal execute said Contract with the CITY OF BURLINGTON and furnish a Performance Bond as required, then the within obligation shall be void and of no effect, otherwise to remain in full force and virtue, in which event the Principal and/or Surety shall pay to the CITY OF BURLINGTON the difference between the amount specified in the principal's Bid and the amount which the CITY OF BURLINGTON may be obligated to pay to the person to whom said Contract may afterwards be awarded, the amounts in each case to be determined by the Bids.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative, pursuant to proper authority.

Attest:

\_\_\_\_\_

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

\_\_\_\_\_

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



## PUBLIC WORKS CONTRACTOR REGISTRATION

The Public Works Contractor Registration Act (PWCRA) requires that all contractors, including named subcontractors, to register with the Department of Labor prior to submitting price proposals or engaging on certain public works contracts that exceed the prevailing wage threshold. The prevailing wage threshold is \$11,892 for municipalities and \$2,000 for all non-municipal entities, such as boards of education, authorities, fire districts, counties, etc.

Because the PWCRA uses the definition of public works contracts under the prevailing wage law, where the law uses the term "bidding", contracting units are advised to read that as meaning to "submit" a price proposal." Thus, the law applies to the formal bidding process where the contract is awarded to the lowest responsible bidder, and the receipt of informal quotations awarded to the vendor whose proposal is the "most advantageous, price and other factors considered."

Under the law a *contractor* is a "person, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof who enters into a contract" which is subject to the provisions of the New Jersey Prevailing Wage Act [N.J.S.A. 34:11-56.25 et seq.]. It applies to contractors based in New Jersey or in another state.

The PWCRA defines "public works projects" as contracts for "public work" as defined in the Prevailing Wage Act [N.J.S.A. 34:11-56.26(5)]. The term means:

- "Construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program.
- "Public work" shall also mean construction, reconstruction, demolition, alteration, or repair work, done on any property or premises, whether or not the work is paid for from public funds,..."
- "Maintenance work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased. While "maintenance" includes painting and decorating and is covered under the law, it does not include work such as routine landscape maintenance or janitorial services.

In order to provide guidance to contracting officials on implementing the law, nine key principles have been identified in the law. The nine items follow:

1. The law applies to all "public works contracts" that exceed the contracting unit's prevailing wage threshold, as set by N.J.S.A. 34:11-56.26 (a) and (b).
2. The law applies to contracts for which public bidding is required, as well as those for which quotations are received.
3. All named contractors in a bid proposal (including out-of-state contractors) must be registered with the Department of Labor's Division of Wage and Hour Compliance at the time proposals **are received** by the public entity.

For clarity, Local Finance Notice 2004-9 dated 4/28/04 uses the following term:  
"Received," in context of when "proposals are received," means the deadline or moment in time when proposals are formally opened and no other proposals are accepted.

4. The law requires contractors to submit certificates after a bid proposal is received and prior to awarding the contract. (N.J.S.A. 34:11-56.55)
5. After bid proposals are received, and prior to contract award, the contractor most likely to receive the contract award must submit to the public entity copies of certifications of all listed sub-contractors.
6. The contracting agent must review the certificates to be sure they were in effect at the time the bid proposals were received.
7. Non-listed subcontractors do not have to be registered until they physically start the public work assigned to them.
8. Bid proposal documents need to inform those submitting proposals of these requirements.

9. Emergency work is covered under the provisions of the Prevailing Wage Act and the PWCRA.

It is specifically recommended that language be included in specifications especially those sections regarding "Instructions to Bidders" advising potential bidders that:

1. All named sub-contractors must be registered with the Department of Labor pursuant to the PWCRA at the time the proposal is received, or the proposal will be determined to be non-responsive.
2. Any non-listed sub-contractor must be registered with the Department of Labor prior to physically starting work.

A contractor's certification can be confirmed by contacting the Department of Labor's Division of Wage and Hour Compliance website ([www.nj.gov/labor/lssc/lspubcon.html](http://www.nj.gov/labor/lssc/lspubcon.html)). This site only shows approved contractors; there is no "pending" approval or a "grace" period. If a contracting unit encounters a problem in its review of certifications, or difficulty in making an award because of a non-registered contractor, they should contact the Contractor Registration Unit as soon as possible.

N.J.S.A. 34:11-56.56 provides several methods for the Department of Labor to enforce the law. The Department can deny renewal, revoke or suspend the registration of a contractor for a period of not more than five years, or, as a condition of initial or continued registration, require a surety bond payable to the State of New Jersey.

Additional information on the PWCRA can be obtained from the:

Contractor Registration Unit	Telephone: 609-292-9464
Division of Wage and Hour Compliance	Fax: 609-633-8591
New Jersey Department of Labor	E-mail: <a href="mailto:contreg@dol.state.nj.us">contreg@dol.state.nj.us</a>
PO Box 389	Web site: <a href="http://www.nj.gov/labor/lssc/lspubcon.html">www.nj.gov/labor/lssc/lspubcon.html</a>
Trenton, New Jersey 08625-0389	

The web site has links to the PWCRA Registration Form, Listing of Contractors, Prevailing Wages and other useful information.

Contact the Division of Local Government Services at (609) 292-7842, by fax at (609) 633-6243 or by e-mail at [lpcl@dca.state.nj.us](mailto:lpcl@dca.state.nj.us) for assistance in the application of the Local Public Contracts Law or related PWCRA issues. As specific situations are presented to the contracting unit, local legal advisors should review this guidance as to its applicability.

**CONSENT OF SURETY**

A performance bond will be required from the successful contractor on this project, and consequently, all bidders shall submit, with their bid, a consent of surety in substantially the following form:

To: \_\_\_\_\_  
(Owner)

Re: \_\_\_\_\_  
(Contractor)

\_\_\_\_\_  
(Project Description)

This is to certify that the \_\_\_\_\_  
(Surety Company)

will provide to \_\_\_\_\_ a performance bond in  
(Owner)

the full amount of awarded contract in the event that said contractor is awarded a contract for the above project.

\_\_\_\_\_  
(CONTRACTOR)

\_\_\_\_\_  
(Authorized Agent of Surety Company)

Date: \_\_\_\_\_

**CONSENT OF SURETY MUST BE SIGNED BY AN AUTHORIZED AGENT  
OR REPRESENTATIVE OF A SURETY COMPANY AND NOT BY THE  
INDIVIDUAL OR COMPANY REPRESENTATIVE SUBMITTING THE BID.**

**AFFIRMATIVE ACTION COMPLIANCE NOTICE**  
**N.J.S.A. 10:5-31 and N.J.A.C. 17:27**

**GOODS AND SERVICES CONTRACTS**  
**(INCLUDING PROFESSIONAL SERVICES)**

This form is a summary of the successful bidder's requirement to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27-1 et seq.

The successful bidder shall submit to the public agency, after notification of award but prior to execution of this contract, one of the following three documents as forms of evidence:

(a) A photocopy of a valid letter that the contractor is operating under an existing Federally approved or sanctioned affirmative action program (good for one year from the date of the letter);

OR

(b) A photocopy of a Certificate of Employee Information Report approval, issued in accordance with N.J.A.C. 17:27-4;

OR

(c) A photocopy of an Employee Information Report (Form AA302) provided by the Division and distributed to the public agency to be completed by the contractor in accordance with N.J.A.C. 17:27-4.

The successful vendor may obtain the Affirmative Action Employee Information Report (AA302) from the contracting unit during normal business hours.

The successful vendor(s) must submit the copies of the AA302 Report to the Division of Contract Compliance and Equal Employment Opportunity in Public Contracts (Division). The Public Agency copy is submitted to the public agency, and the vendor copy is retained by the vendor.

The undersigned vendor certifies that he/she is aware of the commitment to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27.1 et seq. and agrees to furnish the required forms of evidence.

The undersigned vendor further understands that his/her bid shall be rejected as non-responsive if said contractor fails to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27-1 et seq.

COMPANY: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT A**

**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**

**N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)**

**N.J.A.C. 17:27**

**GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, race, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Div. of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Div. of Contract Compliance & EEO for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

(REVISED 9/07)

**EXHIBIT B**

**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**

**N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)**

**N.J.A.C. 17:27**

**CONSTRUCTION CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, up-grading, 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, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the applicable employment goal established in accordance with N.J.A.C. 17:27-7.3. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement

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of construction work, the contractor or subcontractor agrees to attempt to hire or schedule minority and women workers directly, consistent with the applicable employment goal. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with the applicable employment goal, the contractor or subcontractor agrees to be prepared to hire or schedule minority and women workers directly, consistent with the applicable employment goal, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the Division that the union is not referring minority and women workers consistent with the applicable employment goal.

(B) If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goals:

- (1) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
- (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
- (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
- (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;
- (5) If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and women employees remain on the site consistent with the employment goal, and to employ any minority and women workers laid off by the contractor on any other construction site on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing N.J.S.A. 10:5-31 et. seq.;
- (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
  - (i) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall determine the qualifications of such individuals and if the contractor's or subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall hire or schedule those individuals who satisfy appropriate qualification standards. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.
  - (ii) If the contractor's or subcontractor's workforce is consistent with the applicable employment goal, the name of any interested women or minority individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.
  - (iii) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in



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writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) provided to the public agency by the Division for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code (NJAC 17:27)**.

<b>STANDARD BID DOCUMENT REFERENCE</b>	
	<b>Reference: VII-F</b>
Name of Form:	<b>REQUEST FOR PREVAILING WAGE DETERMINATION</b>
Statutory Reference:	N.J.S.A. 34:11-56.25 et seq.
Instructions Reference:	Statutory and Other Requirements VII-F, but not applicable for material and service contracts.
Description:	To be used by the public body in requesting wage determination prior to commencing bid process. Used for public work contracts where the threshold requiring the use of prevailing wages has been exceeded. This form is completed by the public agency to request the minimum wage rates to be paid by a contractor(s)

If the contract is one for public work pursuant to N.J.S.A. 34:11-56. 25 et seq., be sure the current prevailing wage threshold for municipal and non-municipal entities is checked.

The term "public work" means construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under a contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. This also includes off-site workers who custom fabricate plumbing, heating, cooling, ventilation, or exhaust duct systems and mechanical insulation as part of a public works project. [N.J.S.A. 34:11-56.26(5)]

"Public work" shall also mean construction, reconstruction, demolition, alteration, or repair work, done on **any** property or premises, whether or not the work is paid for from public funds, if, at the time of the entering of the contract:

- Not less than 55% of the property or premises is leased by a public body or is subject to an agreement to be subsequently leased by the public body; and
- The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet. [N.J.S.A. - 34:11-56.26(5)(a)(b)]

Public Law 2004, Chapter 101 took affect on July 14, 2004. This law, N.J.S.A. 34:11-56.26(5), adds to existing prevailing wage requirements off-site workers who custom fabricate plumbing, heating, cooling, ventilation, or exhaust duct systems and mechanical insulation as part of a public works project.

The New Jersey Department of Labor's Division of Wage and Hour Compliance's electronic application for official Prevailing Wage Rate Determinations can be obtained at: <https://wnjpin.state.nj.us/pw/prevwage.html>.

This page provides public body officials or their representatives an opportunity to apply for and download an official New Jersey Prevailing Wage Rate Determination. Official Prevailing Wage Rate Determinations are required for public work contracts and certain Economic Development Authority assisted projects.

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## FEDERAL WAGE RATES

General Wage Determinations Issued Under the Davis-Bacon and Related Acts.

**APPENDIX A**  
**AMERICANS WITH DISABILITIES ACT OF 1990**  
**Equal Opportunity for Individuals with Disability**

The contractor and the \_\_\_\_\_ of \_\_\_\_\_, (hereafter "owner") do hereby agree that the provisions of Title 11 of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. S121 01 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the contractor agrees to abide by any decision of the owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the contractor along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the owner or any of its agents, servants, and employees, the *owner shall* expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the owner or its representatives.

It is expressly agreed and understood that any approval by the owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the owner pursuant to this paragraph.

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

<b>STANDARD BID DOCUMENT REFERENCE</b>	
	<b>Reference: VII-D</b>
Name of Form:	<b>BUSINESS REGISTRATION CERTIFICATE</b>
Statutory Reference:	N.J.S.A. 52:32-44 (P.L. 2004, c.57)
Instructions Reference	Statutory and Other Requirements VII-D
Description:	Contractor must provide State Division of Revenue issued Business Registration Certificate with the bid submission.

Detailed information on this requirement is found in Division of Local Government Services Local Finance Notices 2004-17 (8/6/04), 2004-24 (11/1/04), 2005-12 (4/27/05) and on the Division web site at [www.nj.gov/dca/lgs/lpcl](http://www.nj.gov/dca/lgs/lpcl). These resources and a Frequently Asked Questions resource should be consulted when questions arise.

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**STATE TREASURER'S LIST OF DEBARRED,  
SUSPENDED AND DISQUALIFIED BIDDERS**

The Contractor shall submit with his bid a sworn statement, as set forth herein signed by an officer or partner of the Contractor, indicating whether or not the Contractor is at the time of the bid, included on the State Treasurer's List of Debarred, Suspended, or Disqualified Bidders. The Contractor will immediately notify the Owner whenever it appears that a Contractor is on the State Treasurer's List. The Contractor may be debarred, suspended, or disqualified from contracting with the State of New Jersey and NJDEP if the Contractor commits any of the acts listed in N.J.A.C. 7:1D-2.2.

STATE OF NEW JERSEY

§:

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_ of the City of \_\_\_\_\_  
in the County of \_\_\_\_\_ and the State of \_\_\_\_\_ of full age,  
being duly sworn according to law on my oath depose and say that:

I am \_\_\_\_\_, an officer of the firm of \_\_\_\_\_  
the bidder making the Proposal for the above named work, and that I executed the said Proposal with full authority to do so that said bidder at the time of making of this bid, is not included on the State of New Jersey, State Treasurer's List of Debarred, Suspended and Disqualified Bidder; and that all statements contained in said Proposal and in the affidavit are true and correct, and made with the full knowledge that the Owner as Local Unit relies upon the truth of the statements contained in said Proposal and in the statements contained in this affidavit in awarding the contract for said work.

The undersigned further warrants that should the name of the firm making this bid appear on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders at anytime prior to, and during the life of this Contract, including the Guarantee Period, that The \_\_\_\_\_ (Loan Applicant) shall be immediately notified by the signatory of this Eligibility Affidavit.

The undersigned understands that the firm making the bid as a Contractor is subject to debarment, suspension and/or disqualification in contracting with the State of New Jersey and the Department of Environmental Protection if the Contractor, pursuant to N.J.A.C. 7:1D-2.2 commits any of the acts listed therein, and as determined according to applicable law and regulation.

\_\_\_\_\_  
(Insert Name and Address of Contractor)

\_\_\_\_\_  
(Insert Name and Title of Affiant)

Subscribed and sworn  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Notary Public of \_\_\_\_\_

My commission expires \_\_\_\_\_, 20\_\_\_\_

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**LISTING OF SUBCONTRACTORS TO BE USED**

Before submitting the bid, the Bidder shall completely familiarize himself with Section 40A:11-16 of the New Jersey Local Public Contracts Law (New Jersey Statutes Annotated 40A:11-16). On contracts for the erection, alteration or repair of any public building, if the Bidder will use subcontractors for plumbing work and gas fitting and all kindred work, steam and hot water heating and ventilating apparatus, steam power plants and kindred work, electrical work, structural steel and ornamental iron work he shall list below the name and address of each subcontractor to be used for these respective and kindred categories of work.

**If work of the types listed below will be performed by the Bidder, the Bidder shall state below and shall provide copies of licenses covering each trade prior to Award.**

<u>WORK CATEGORY</u>	<u>NAME</u>	<u>ADDRESS</u>	<u>NJ LICENSE NO.</u>
Plumbing and Gas Fitting and all kindred work			
Steam Power Plants, Steam and Hot Water Heating and Ventilating Apparatus and all kindred work			
Electrical Work			
Structural Steel and Ornamental Iron Work			

(Attach additional pages as required)

Note: Submission of the names and addresses of the subcontractors required by N.J.S.A. 40A:11-16 is essential and non-waivable. The names and addresses for subcontractors must be provided for **each** work category above, otherwise the bid will be deemed nonresponsive. Where **more than one** subcontractor is named for a work category, the bidder must identify, in the Bid, the scope of work that is to be performed by each subcontractor, as required by P.L. 1997, c. 408. Each listed sub-contractor must also submit along with their respective license a valid New Jersey Business Registration Certificate and Public Works Certification prior to bid award. Failure to comply with these statutory requirements will result in the Bid being deemed nonresponsive.



<b>STANDARD BID DOCUMENT REFERENCE</b>	
	<b>REFERENCE: VII-I</b>
Name of Form:	<b>FORMS TO BE PROVIDED BY ELEC</b>
Statutory Reference:	N.J.S.A. 19:44A-20.27 (P.L. 2005, c.271,S.3)
Instructions Reference:	Statutory and Other Requirements VII
Description:	Disclosure of Contributions to ELEC

#### Disclosure of Contributions to New Jersey Election Law Enforcement Commission (ELEC)

N.J.S.A. 19:44A-20.27 establishes a new disclosure requirement for business entities. It requires that, when a business entity has received in any calendar year \$50,000 or more in public contracts with public entities, it must file an annual report with the Election Law Enforcement Commission (ELEC). The report shall disclose any contribution of money or any other thing of value, including an in-kind contribution, or pledge to make a contribution of any kind:

- To a candidate for or the holder of any public office having ultimate responsibility for the awarding of public contracts, or,
- To a political party committee, legislative leadership committee, political committee or continuing political committee.

The report will include all reportable contributions made by the business entity during the 12 months prior to the reporting deadline. ELEC will be promulgating a form and procedures for filing commencing in January 2007. ELEC can also impose fines for failure to comply with this requirement.

While the local unit has no role in this process, it is recommended that all bid or proposal specifications and contracts should include language notifying business entities of their potential obligation under the law. Such language could read as follows:

Starting in January 2007, all business entities are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 if they receive contracts in excess of \$50,000 from public entities in a calendar year. Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

**GENERAL INSTRUCTIONS TO BIDDERS AND CONTRACT CONDITIONS**

**INSTRUCTIONS TO BIDDERS**

**NOTE: ANY QUESTIONS MUST BE E-MAILED TO: [margaret@chhistoricalarchitects.com](mailto:margaret@chhistoricalarchitects.com) and [wharris@burlingtonnj.us](mailto:wharris@burlingtonnj.us) and NO PHONE CALLS WILL NOT BE ACCEPTED. The last day for questions is by 4:00 pm.**

THURSDAY, JANUARY 23, 2024,

**SECTION I PREPARATION AND SUBMITTAL OF BIDS**

All bids must be submitted on the township's bid forms in sealed envelopes. All documents, bid bond, affidavits and other information accompanying the bids, shall be contained in the sealed bid envelope.

The outside of the sealed bid envelope must contain the following information and be addressed as follows:

**Name of Bidder** \_\_\_\_\_

**Address of Bidder** \_\_\_\_\_

Ms. Cindy A. Crivaro, RMC,  
City Clerk, City Hall,  
525 High Street, Burlington, NJ 08016

**Bid Name:** *"William R. Allen School R. Allen School Restoration project."*

If you are using a mailer/transmittal envelope or box to transmit your sealed bid envelope; all of the above information must also appear on the exterior mailer/transmittal envelope or box.

Bids must be delivered prior to the date and time of the bid opening. **All bids must be delivered to the Municipal Clerk's Office** at the above address during normal business hours, which are, 9:00 AM to 5:00 PM, Monday through Friday. We will not accept bid packages on weekday holidays when the Municipal Clerk's Office is closed. NO other office is authorized to accept bids.

Bids can be hand delivered. If using an outside delivery and/or messenger service (i.e. Federal Express, UPS, etc.), please note the following: **The City of Burlington will not be responsible for deliveries made prior to or after normal business hours, or to any other office.**

**NO BID SHALL BE ACCEPTED AFTER THE DATE AND TIME ANNOUNCED IN THE NOTICE TO BIDDERS AND ANY BIDS RECEIVED AFTER SUCH DATE AND TIME WILL BE RETURNED UNOPENED TO THE BIDDER.**

*SECTION II*

**ARTICLE G-1        DEFINITIONS**

G-1.1 City/Owner - "City", "Municipality" Or Owner shall mean the City of Burlington, 525 High Street, Burlington, NJ 08016

G-1.2 City's Representatives – "City's Representative" shall mean all its duly appointed engineers, assistants, Public Works Director and/or Engineer and other employees assigned to oversee the project.

G-1.3 Public Works Director – Director shall mean the duly appointed Public Works Director or his designee, for the City of Burlington authorized to act on its behalf, having business residence at the City of Burlington Public Works Building, Mitchell Ave and Federal St. Burlington, NJ 08016.

G-1.4 Contractor – "Contractor" shall mean that individual partnership or corporation performing and having prime responsibility for the work under this Contract and whose name is mentioned and defined on the Agreement.

G-1.5 Governing Body - "Governing Body" shall mean the elected Mayor and Council of the City of Burlington.

G-1.6 Sub-Contractor – "Sub-Contractor" shall mean a person, firm, or corporation supplying materials and/or labor for work at the site of the Project for and under separate contract or agreement with the Contractor.

G-1.7 Singular Number – Gender – Unless the context otherwise connotes, as used in the Contract, words of one gender include the other genders, the singular includes the plural; the plural includes the singular.

G-1.8 Contract – The Contract consists of the Notice to Bidders, Special Instructions to Bidders and Specifications, General Instructions to Bidders and Contract Conditions, Proposal, Plans, Performance Bond, Agreement and Addenda, if any.

G-1.9 ASTM – "ASTM" shall mean the American Society for Testing Materials.

G-1.10 N.J. State Highway Specifications – "N.J. State Highway Specifications" shall mean the current specifications published by the N.J. Department of Transportation entitled "Standard Specifications for Road and Bridge Construction – 2007" and all amendments or revisions to date.

**ARTICLE G-2**      **SCOPE OF WORK**

The Contractor shall furnish all of the materials and all of the equipment and labor necessary, and perform all of the work described in the specifications for the project, in accordance with the requirements and provisions of the following Documents which are hereby made a part of the Agreement:

- (a) The Proposal Forms
- (b) AIA Documents A101 and A201 – 2017 Standard Form of Agreement Between Owner and General Contractor and General Conditions of the Contract for Construction, respectively.  
Article G-1 through Article G-71.
- (c) Any Addenda issued as part of the Bid Process
- (d) All other Contract Documents included herein and made a part thereof.

**ARTICLE G-3**      **INVITATION TO BID AND BIDDING INSTRUCTIONS**

In accordance with the Notice to Bidders, Proposals will be received for the performance of the Project, the designation of which is stated in the said Notice.

Bids are required on the items requested in the form of proposal for the Project. The prices bid shall cover all costs, of any nature, incident to and growing out of the work including the cost of all work, labor, materials, equipment, transportation and all else necessary to perform and complete the Project in the manner and with the time required, all incidental expenses in connection therewith, all costs for loss by damage or destruction of the Project, for any additional expenses on account or unforeseen difficulties encountered for settlement of damages and for replacement of defective work and materials.

Before submitting his Proposal, the Bidder shall be familiar with the specifications, and other documents that will form parts of the Contract, and shall have investigated in detail the site of the Project and shall have make such examination thereof as to satisfy himself of the character of the work so he can secure the necessary labor and equipment he proposes to use, and that such labor and equipment will comply with the requirements therefore and can be obtained by him in the quantities at the time required.

**ARTICLE G-4**      **SPECIFICATIONS**

The Project shall be performed in accordance with the requirements of the Specifications, or such modifications thereof, as may be made during the progress of the work. Should any work be required which is not denoted in the Specifications or in the Plans, and which is an obvious omission, but nevertheless necessary for the proper performance of the Project, such work shall be performed as fully as if it were described and delineated. The current standard specifications of the New Jersey Department of Transportation are intended to supplement these Specifications and all provisions and conditions as stated therein shall be fully complied with. The bidder understands and agrees that its bid is submitted on the basis of the specifications prepared by the City of Burlington. The bidder accepts the obligation to become familiar with these specifications.

Bidders are expected to examine the specifications and related documents with care and observe all their requirements. Ambiguities, errors or omissions noted by bidders should be promptly reported in writing to the Architect ([margaret@chhistoricalarchitects.com](mailto:margaret@chhistoricalarchitects.com)) and Office of Community Development ([wharris@burlingtonnj.us](mailto:wharris@burlingtonnj.us)). In the event the bidder fails to notify the City of Burlington of such

ambiguities, errors or omissions, the bidder shall be bound by the bid. Any challenge to bid specifications must be made in writing no less than 3 business days prior to the opening of bids. Pursuant to N.J.S.A. 40A:11-13.

No oral interpretation of the meaning of the specifications will be made to any bidder. Every request for an interpretation shall be in writing to the Architect ([margaret@chhistoricalarchitects.com](mailto:margaret@chhistoricalarchitects.com)) and Office of Community Development ([wharris@burlingtonnj.us](mailto:wharris@burlingtonnj.us)). In order to be given consideration, written requests for interpretation must be received ten (10) days prior to the date fixed for the opening of the bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications, and will be distributed to all prospective bidders, in accordance with N.J.S.A. 40A:11-23. All addenda so issued shall become part of the contract documents, and shall be acknowledged by the bidder in the bid. The City of Burlington interpretations or corrections thereof shall be final.

The Contractor shall not proceed with the work in question until the problem has been resolved by the Engineer or designated City's Representative.

The Contractor shall have available at the construction site one complete set of the specifications and all addenda thereto issued by the City. Such materials shall be kept in good order and available to the City's Representative.

#### **ARTICLE G-5            SITE EXAMINATION**

The Contractor shall inspect the site of the work before submitting his Proposal and shall familiarize himself as far as may be practicable with the conditions existing at the time his Proposal is submitted. The submission of a Proposal shall be accepted as evidence that such a visit and investigation have been made. No allowances shall be made on behalf of the Contractor because of existing conditions.

JANUARY 13, 2025,

A pre-bid walkthrough is scheduled for **Monday, January 13, 2025, at 10:00 AM**. While attendance is not mandatory at this meeting, it is the responsibility of the Bidder to be familiar with all site conditions and attendance is strongly recommended.

#### **ARTICLE G-6            PROPOSAL FORM**

Proposals shall be submitted on the form of Proposal furnished by the City, properly filled out, and shall be duly executed.

#### **ARTICLE G-7            FILLING IN PROPOSAL FORM**

Proposals are requested on a unit price basis unless designated otherwise. The Bidder shall state in the form of Proposal the price per unit of measure of each scheduled item of the work, for which he/she will agree to carry out the work as well as the unit price for the performance of the Project as determined by multiplying each estimated quantity by the price per unit of measure bid therefore and adding together the resulting amounts. In case of discrepancy in the figures submitted, the unit price stated will control in awarding the Contract, and the unit price stated will be changed proportionately as to agree with the unit price.

All Proposals shall be typewritten or printed in ink in a neat and legible manner.

The Bidder shall submit prices on all items listed in the Proposal.

**ARTICLE G-8**            **ESTIMATE OF QUANTITIES**

The estimate of quantities for several scheduled items of work, involved in the performance of the Project, stated in the form of Proposal are to be used for comparison of Proposals received. The actual quantities may be greater or less.

The City reserves the right to increase or diminish quantities shown or to omit any of them as it may deem necessary.

The Bidder is advised that a certain amount of money will be available for the Project and in case the low bid is in excess of the amount available, the right is reserved to increase or diminish any or all quantities to bring the cost of the work within the amount available.

**ARTICLE G-9**            **PROPOSAL GUARANTY**

**BID GUARANTY**

Bidder shall submit with the bid a certified check or bid bond in the amount of ten percent (10%) of the total price bid, but not in excess of \$20,000.00, payable unconditionally to the City of Burlington. When submitting a Bid Bond, it shall contain Power of Attorney for full amount of Bid bond from a surety company authorized to do business in the State of New Jersey and acceptable to the City of Burlington. The check or bond of the unsuccessful bidder(s) shall be returned as prescribed by law. The check or bond of the bidder to whom the contract is awarded shall be retained until a contract is executed and the required performance bond or other security is submitted. The check or bond of the successful bidder shall be forfeited if the bidder fails to enter into a contract pursuant to N.J.S.A. 40A:11-21. **FAILURE TO SUBMIT THIS SHALL BE CAUSE FOR REJECTION OF THE BID.**

**CONSENT OF SURETY**

Bidder shall submit with the bid a Certificate (Consent of Surety) with Power of Attorney for full amount of bid price from a Surety Company authorized to do business in the State of New Jersey and acceptable to the City of Burlington stating that it will provide said bidder with a Performance Bond in the full amount of the bid. This certificate shall be obtained in order to confirm that the bidder to whom the contract is awarded will furnish Performance and Payment Bonds from an acceptable surety company on behalf of said bidder, any or all subcontractors or by each respective subcontractor or by any combination thereof which results in performance security equal to the total amount of the contract, pursuant to N.J.S.A. 40A:11-22. **FAILURE TO SUBMIT THIS SHALL BE CAUSE FOR REJECTION OF THE BID.**

**ARTICLE G-10**            **SUBMITTING PROPOSAL**

No Bid will be considered which is not sealed in an envelope and endorsed as directed in the Notice to Bidders. No Bids will be considered which are received after the hour and date named in the Notice to Bidders.

Proposal will be publicly opened and read at the time and on the date set at the place indicated in the Notice to Bidders.

**ARTICLE G-11 CAUSES FOR REJECTION**

The City may reject any or all Proposals (a) if the prices are obviously unbalanced, (b) if competition obviously has been suppressed, (c) if received from Bidders who have previously performed work for the City in an unsatisfactory manner, (d) to waive technicalities as may be deemed advisable to do so in the interest of the City (e) for any reason detrimental to the interest of the City, (f) The lowest bid substantially exceeds the contracting unit's appropriation for the goods or services. (g) The mandatory items listed on the bidders' checklist is not submitted with the bids. (h) if the contractor is not deemed qualified to bid the work showing previous historical restoration work commensurate with the work proposed (this is a requirement of the New Jersey Historic Trust).

**ARTICLE G-12 LAWS AND OTHER REQUIREMENTS**

The Contractor at all times shall observe and comply with all Federal and State Laws, local by-laws, ordinances and regulations that in any manner affect the conduct of the work, and shall indemnify and save harmless the City and all its officers, representatives, consultants or agents against claim or liability arising from or based on the violation of such.

**ARTICLE G-13 AWARDING CONTRACT**

Award, if made, will be to the lowest responsible Bidder whose proposal complies in all respects with the requirements stated herein. The award shall not be binding upon the City until the Contract has been executed by the City nor shall any work be performed on account of the proposed contract until the contract has been fully executed and delivered.

**ARTICLE G-14 RETURN OF PROPOSAL GUARANTY**

All Proposal guarantees, except the checks of the two lowest bidders shall be returned within three (3) business days after Award of Contract, Sundays and holidays excluded. The check of that bidder to whom the contract has been awarded shall be retained until the contract is executed and the required Performance Bond is submitted and approved.

**ARTICLE G-15 PERFORMANCE BOND**

Prior to the execution of the contract, the successful bidder will be required to furnish a bond in the full amount of the bid for the faithful performance of the contract, effective for the full term of the contract, in the amount equal to the total contract price.

**FAILURE TO SUBMIT THIS WITH THE EXECUTED CONTRACT SHALL BE CAUSE FOR DECLARING THE CONTRACT NULL AND VOID.**

Agents of bonding companies which write bonds for the performance of this contract shall furnish the necessary power of attorney, bearing the seal of the company and evidencing the agent's authority to execute the particular type of bond to be furnished as well as the right of the surety company to do

business in the State of New Jersey. **FAILURE TO SUBMIT THIS WITH THE EXECUTED CONTRACT SHALL BE CAUSE FOR DECLARING THE CONTRACT NULL AND VOID.**

**ARTICLE G-16**      **EXECUTION OF CONTRACT**

The Bidder, to whom the Contract has been awarded, shall within ten (10) days of the date of the award execute and deliver the necessary agreements entering into the Contract with the City.

**ARTICLE G-17**      **FAILURE TO FURNISH DATA**

Failure upon the part of the Bidder, to whom the Contract has been awarded to execute and deliver the Contract, and the Surety Corporation Bond, in the manner and in the time provided shall be just cause for annulment of the award. It is understood and agreed by the Bidder, to whom the Contract has been awarded that if the award is annulled for the above reasons the Proposal Guaranty, shall become the property of the City of Burlington not as a penalty, but as liquidated damages.

**ARTICLE G-18**      **COMMENCEMENT AND PROCEDURE**

The Contractor shall commence work within (10) days after the receipt of "NOTICE TO PROCEED" and shall continue without interruption until the work is completed.

If the Contractor fails to complete the work under the Contract within the time specified, he may request an extension of time stating reasons therefore; and if approved by the City, such extension will be granted.

**ARTICLE G-19**      **ORDER OF COMPLETION**

The Contractor shall submit, at such times as may reasonably be requested by the Public Works Director, schedules which shall show the order in which the Contractor proposes to carry on the work, with dates at which the Contractor will start the several parts of the work, and estimated dates of completion of the several parts.

**ARTICLE G-20**      **NOTIFICATION OF DIRECTOR**

The Engineer or designated City Representative shall be notified at least one week prior to the commencement of construction.

**ARTICLE G-21**      **UTILITY MARK OUTS**

No excavation, sidewalk/curb removal or form setting shall occur without notifying the One Call System at 1-800-272-1000 and complying with the One Call System requirements.

**ARTICLE G-22**      **LOCATION OF UNDERGROUND STRUCTURES**

Where existing sewers, water, gas or electric mains and other conduits met during the progress of the work, are shown upon the drawings, the locations of these structures are intended to be approximate



only and represent best possible information at time of design. Prior notification of utility companies will insure adequate locations.

**ARTICLE G-23**                    **DAMAGES TO UTILITIES AND OTHER STRUCTURES**

The Contractor shall be responsible for all injury to water pipes, fire hydrants, gas pipes, electrical wire conduits, sewers and other structures met within the prosecution of the work and shall be liable for damages to public or private property resulting there from which amounts may be deducted from any estimate due him. The Contractor is required to sling, shore up and secure in their place all water pipes, gas pipes, electrical conduits and sewers without injury, and to provide for and maintain the flow of water, gas, electricity, drainage and water courses, whether on the surface or underground which may be intercepted or interrupted during and by the progress of the work. When necessary to change the location of gas pipes, electrical conduits or any other underground structures owned or controlled by corporations other than the City, the change will be made by the owners thereof and any additional cost will be borne by this Contractor. The Contractor shall cooperate with any utility companies affected.

**ARTICLE G-24**                    **PROTECTION AGAINST ACCIDENT**

The Contractor shall erect suitable barriers around the project to prevent accidents to passerby's, and shall place and maintain, during the night sufficient lights on or near the work. The Contractor shall have charge of, and be responsible for, the entire scope of the construction for which he has contracted until its completion acceptance.

**ARTICLE G-25**                    **PROTECTION OF PROPERTY**

The Contractor shall, at his expense, shore up, protect and make good, as may be necessary, all buildings walls, fences, or other property injured, or liable to be injured during the progress of the work, and the Contractor will be held responsible for all damages which may happen to neighboring property from neglect of this precaution, or from other causes connected with the prosecution of the work.

The Contractor shall confine all of his activities, equipment, materials, and all else within the construction and/or easement limits unless he obtains written permission from the affected property owners. All property damaged beyond the construction limits shall be restored to its original condition at no cost to the City.

Earth fill shall be used to regrade any properties disturbed during construction, use and quality of which shall be designated by the Engineer or designated City Representative from material available at the job site.

**ARTICLE G-26**                    **PUBLIC SAFETY AND CONVENIENCE**

The Contractor shall conduct his work with the least possible obstruction to traffic. The convenience of the public and of the residents adjacent to the project and the protection of persons and property are of first importance and shall be provided for. Temporary crossings shall be constructed and maintained where access to an adjacent property is desired, and fire hydrants, gas and water valves shall be kept accessible.

The Contractor shall erect and maintain barricades, danger signals, warning signs and lights adjacent to work in progress and other places of danger to traffic. All devices shall conform to N.J.D.O.T. specifications (2007) for same.

**ARTICLE G-27**                    **PROTECTION OF TRAFFIC**

The Contractor shall erect and maintain barricades, danger signals, warning signs and lights adjacent to work in progress and other places of danger to traffic. All devices shall conform to N.J.D.O.T. specifications (2007) as amended and MUTCD for Street and Highways-2003 Edition.

**ARTICLE G-28**                    **MAINTENANCE OF TRAFFIC**

Traffic is to be maintained over all existing streets within the scope of the Project, and the Contractor shall plan and carry out his work accordingly. If temporary means are required for the maintenance of traffic, the Contractor shall provide such means as approved or directed by the Public Works Engineer or designated City Representative and/or Piscataway Officials having jurisdiction.

**ARTICLE G-29**                    **TRENCH MAINTENANCE**

The Contractor shall be responsible for the maintenance of all sewer trenches at all times prior to final acceptance of the project. In case of trench settlement and/or pavement failure, the Contractor shall make all necessary repairs within 24 hours after notification. Failure to make said repairs within the designated time will result in repairs being made by the City at the expense of the Contractor by way of deductions from his earnings.

**ARTICLE G-30**                    **CONSTRUCTION OBSTACLES**

All prices quoted in the Proposal, shall include the necessary costs to remove and replace all obstacles to the proper completion of the work unless noted otherwise.

**ARTICLE G-31**                    **SUPERINTENDENT AND WORKMEN**

The Contractor shall attend to the work personally or through a competent, English speaking; superintendent of the work, authorized to receive and carry out instructions.

The workmen shall be competent and shall perform their work in a neat and workmanlike manner.

The superintendent and number of workmen shall be sufficient, in the opinion of the Engineer or designated City Representative, to insure the completion of the Project, within the time stipulated therefore.

Personnel deemed unsatisfactory by the Engineer or the City Representative shall be promptly replaced. The Superintendent shall represent the Contractor and all instructions given to him shall be as binding as if given to the Contractor. Instructions to the Contractor shall be confirmed in writing, if requested. The Contractor's Superintendent shall not be replaced during the progress of the work without the consent of the City Representative.

**ARTICLE G-32**      **DEVIATION FROM PLANS AND SPECIFICATIONS**

All work must be performed in strict accordance with these Specifications. Any deviation from the Plans and/or Specifications that may be required or necessary will in all cases be determined by the Engineer or designated City Representative.

**ARTICLE G-33**      **DEFAULT OF CONTRACT**

If at any time, in the opinion of the Public Works Director, the work under this Contract or any part thereof has been abandoned, is unnecessarily delayed or cannot be completed by the Contractor at the rate of progress or within the time specified, or the Contractor willfully is violating any of the covenants of the Contract, or is executing same in bad faith, then the City may declare the Contractor in default in this contract and notify him to discontinue all work there under; and the City may then proceed with the completion of the work by calling on the Surety Company to complete the work or by such other means as it may elect. The City may take over and use materials employed for the Project at the time of default, and if necessary procure other materials and equipment for its completion. The City shall recover the cost of work thus procured by deducting the amount thereof out of the monies due or which may become due to the contractor, and in the event that such monies are insufficient to pay the cost of work done and of materials and equipment procured and to do all else necessary for the proper completion of the Project, then the amount of such cost in excess of such monies shall be paid by the Contractor and/or his Surety.

In case the Contractor shall fail to fully and entirely complete the work satisfactorily and in conformity with the provisions of and conditions of this agreement within the time stated or within such further time, as shall be fixed or allowed, the Contractor shall pay to the City for each and every calendar day that he be in default, the sum of \$ 300.00 or such other sum stipulated in "Special Instructions to Bidders" ( is under the Specification pages if special instruction to bidders are included with bid package.)

**ARTICLE G-34**      **MEASUREMENT OF QUANTITIES**

G-34.1 - Before and During Construction. All dimensions shall be obtained or verified by the Contractor for the accommodation of equipment and/or materials furnished by the City and/or the Contractor and installed by the Contractor. Dimensions on the drawings indicate nominal sizes under ideal conditions and shall not under any conditions be so construed as to relieve the Contractor of the responsibility of taking measurements in the field and furnishing material of the correct dimensions

G-34.2 - After Construction. All work completed under this Contract will be measured for payment by the City's Representative according to United States standard measures.

**ARTICLE G-35**      **PROGRESS PAYMENTS**

Payments will be made for the actual quantity of authorized work done under each item scheduled in the Proposal at the respective unit price as describes in G-7 therefore, and under supplemental agreements, if any, at the price or prices stipulated therein.

The City shall make payments on account of the Contract as follows:

On a date not later than the fifth day of every month, the Contractor shall present

to the Public Works Director on forms provided by him an invoice covering the total quantities under each item of work that have been completed from the start of the job up to and including the last day of the proceeding month, and the value of the work so completed determined in accordance with the schedule of unit prices for such items together with such supporting evidence as may be required by the Public Works Director.

(a) The invoice submitted shall be processed during the month submitted. After deducting 2% retained percentage, to be held by the City until final completion and acceptance of all work under the Contract, and deduction of all previous payments.

(b) Final payment of all monies due on the Contract shall be made within 60 days of completion and acceptance of the work.

Any increases in the contract quantities or (authorized) additional work shall be processed at the time of final payment in one Change Order.

**ARTICLE G-36**      **ACCEPTANCE BY PUBLIC WORKS DIRECTOR AND FINAL PAYMENT**

G-36.1 Upon receipt of written notice that the work is ready for final inspection and acceptance, the Public Works Director will promptly issue a final certificate, over his own signature, stating that the work required by this Contract has been completed and is accepted by him under the terms and conditions thereof, and the entire balance found to be due the Contractor, including the retained percentage, shall be paid to the Contractor by the City with sixty (60) days after the date of said final certification.

G-36.2 Before issuance of final Certificate of Acceptance, the Contractor shall submit evidence satisfactory to the Public Works Director that all payrolls, material bills, and other indebtedness connected with the work have been paid.

G-36.3 The making and acceptance of the final payment shall constitute a waiver of all claims by the City, other than those arising from unsettled liens, from faulty work appearing within 12 months after final payment, from requirements of the specifications or from manufacturer's guarantees. It shall also constitute a waiver of all claims by the Contractor, except those previously made and still unsettled.

G-36.4 Before issuance of final certificate of acceptance, the Contractor shall file a Maintenance Bond satisfactory to the City equal to 10% of the final Contract price with sufficient surety conditions as follows:

That if during a period of one year subsequent to the completion of this Contract, any defect shall occur or appear in the work therein contracted for or should it appear that imperfect workmanship or inferior or substandard materials were employed or utilized in the performance thereof, then said obligors shall, at their own proper expense, make good the same including the cost of replacement thereof; and shall indemnify and save harmless the City from any cost or expense occasioned by reason of any such defect, or by reason of the use or employment of inferior materials or faulty workmanship.

**ARTICLE G-37**      **SIGNS AT THIS PROJECT**

The design and text of signs advertising the Contractor's business in connection with this project shall be subject to the approval of the Public Works Director.

New Jersey Historic Trust preservation grant sign as outlined in

**ARTICLE G-38**      **ADVERTISING REFERENCE AND PICTURES**

The Contractor may not make reference to the City of Burlington and no photographs or pictures of this project shall be made in any advertising done by or for the Contractor without written permission of the City.

**ARTICLE G-39**      **INSPECTIONS AND TESTINGS**

All construction will be subject to Township inspections and testing as conducted by the Public Works Director and/or his representatives.

The Township shall perform certain tests to insure adequate construction, compliance with specifications and the suitability of construction materials and for any other reason it may deem necessary. The Contractor shall cooperate in making all tests and furnish the labor and equipment (i.e. small construction tools, wheelbarrow and the like) to assist the Public Works Director and/or his representatives at the job site in performing the testing.

**ARTICLE G-40**      **MATERIALS – GENERAL**

All materials used in this project are to meet the approval of the Public Works Director and/or his representatives.

The Contractor shall provide the Public Works Director or his representatives, with one copy each of all delivery slips for materials used in the project.

All materials found defective during the progress of the work will be rejected by the Public Works Director or his representatives, and the Contractor shall promptly remove such defective material from the job site.

**ARTICLE G-41**      **PERSONAL LIABILITY**

In carrying out the provisions of the Contract, or in exercising any power or authority granted them by their position, there shall be no liability upon the Township of its authorized representatives, consultants, or assistants, either personally or as officials of the Township, it being understood that in such matters they act as agents and representatives.

**ARTICLE G-42**      **DAMAGE CLAIMS AND INDEMNITY INSURANCE**

The Contractor shall indemnify and save harmless the Township, its Officers, consultants, agents and servants, and each and every one of them against and from all suits and costs of every kind and description, and from all damages to which the Township or its officers, agents, consultants or servants may be put to by injury to the person or property of others resulting from the performance of the project, or through the negligence of the Contractor.

All of the Contractor's insurance coverage shall contain a clause providing the indemnification required by this Article. The certificate of insurance furnished by the Contractor shall state specifically that the indemnification required by this Article is provided by the policy(s).

**G-42.1 INDEMNIFICATION**

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Township and its agents and employees from and against all claims, damages, losses and expenses including but not limited to attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

If any claims against Owner or Public Works Director or any of their agents or employees by any employee of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under the first paragraph of this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of Contractor under the first paragraph of this section shall not extend to the liability of the Township, its agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications.

Certificate of Liability and Workmen's Compensation Insurance satisfactory to the Township shall be filed with the Township prior to contract execution.

All of the CONTRACTOR'S insurance coverage shall provide the indemnification required by this section. The certificate(s) of insurance furnished by the CONTRACTOR shall state specifically that the indemnification is afforded by the policy(s). Such statement, if not included in the body of the policy, shall be typed on the face or on the back of the certificate, there must be a reference on the front of the certificate stating that the indemnification is provided and the clause is on the back.

The Contractor shall carry such liability insurance with companies acceptable to the township and shall furnish certificates thereof to the Township within ten (10) days after signing of the Contract and before work has started. These certificates shall contain a clause wherein it is stated that the City of Burlington is to be notified in case of cancellation of or any change in the policy. The contractor

shall require subcontractors to carry Workmen's Compensation Insurance and liability insurance to the limits and with the conditions described above.

The minimum amounts of insurance to be carried by the CONTRACTOR shall be as follows:

Workmen's Compensation and Employers Liability Insurance

The CONTRACTOR shall maintain during the life of this Contract adequate workmen's compensation and employer's liability insurance for all employed in connection with the work, and in case any work is sublet, the CONTRACTOR shall require each subcontractor similarly to provide Workmen's compensation and employer's liability insurance for the latter's employment, unless such employees are covered by the protection afforded by the CONTRACTOR'S insurance.

Comprehensive General Liability

Limits shall be \$1,000,000 bodily injury (BI) each occurrence and \$500,000 property damages (PD) each occurrence.

The Certificate of Insurance must indicate coverage at the above limits for:

Explosion, collapse and underground utilities (XCU.)  
Contractual – Indicated on the face of the Certificate as  
Being in accordance with the wording of the contract,  
Specifically the second paragraph of this section.  
Independent Contractors  
Completed Operations

Comprehensive Automobile Liability

Limits shall be \$1,000,000 bodily injury (BI) each Occurrence and \$500,000 property damage (PD) each occurrence.

The Certificate of Insurance must indicate coverage at the above limits for:

Hired Vehicles  
Non-Owned Vehicles

Owner's Protective Policy

The CONTRACTOR shall supply an Owner's Protection policy. Written in the name of the OWNER with limits of \$1,000,000 bodily Injury. (BI) and \$500,000 property damage (PD). In lieu of this Policy, the CONTRACTOR may indicate on the Comprehensive General Liability Certificate of Insurance the OWNER has been Named as an additional insured for this Contract.

The policies shall remain in force until all work has been completed. The CONTRACTOR shall ascertain the cost to him of all the required insurance policies before submitting his bid.

All policies shall be endorsed to provide the OWNER with ten (10) days written notice in advance of any changes or cancellations which modify the coverage's provided. The failure to notice clause shall be stricken from the endorsement.

In the event the CONTRACTOR shall carry blanket liability insurance coverage, compliance with the foregoing requirements shall be met by furnishing as endorsement or rider to said blanket liability insurance policy naming the OWNER as co-insured for the work involved, hereunder, provided the limits of said blanket liability insurance policy shall comply with the amounts outlined above.

**ARTICLE G-43**      **RESPONSIBILITY OF WORK**

The Contractor assumes full responsibility for safety, materials and equipment employed in the construction of the project and agrees to make no claim against the Township for damage or theft to such materials and equipment from any case whatsoever.

Until its final acceptance, the Contractor shall be responsible for damage to or destruction of the Project, or any part thereof, due to any cause whatsoever. He shall make good without cost to the Township all work damaged or destroyed before the final acceptance.

**ARTICLE G-44**      **UNAUTHORIZED AND DEFECTIVE WORK**

The Contractor shall use no materials or products in the work before they have been inspected and approved; he shall perform no work before the lines, grades and benchmarks therefore have been established, and he shall perform no work not designated in the Contract unless a written order therefore has been given by the Public Works Director.

Work performed and materials and products furnished which do not comply with the requirements therefore, will be rejected and shall be removed replaced or repaired, as the Public Works Director may direct and in a manner satisfactory to him. Materials and products which have been rejected and the defects of which have been subsequently removed shall not be used until approved by the Public Works Director.

When additional work of a kind not shown in the original schedule of quantities is to be performed, a supplemental agreement between the Township and the Contractor shall be entered into. Any work done without written authority may be considered as unauthorized and at the expense of the Contractor and may not be measured or paid for by the Township.

**ARTICLE G-45**      **ACCEPTANCE OF WORK BY THE GOVERNING BODY**

When the work under this Contract has been completed, the Contractor shall so notify the Public Works Director. If the work is not acceptable to the Governing Body, it will advise the Contractor as to the particular defects to be remedied before final acceptance will be made. Payments made to the Contractor before final acceptance do not commit the Township to acceptance of the work. The final inspection and acceptance will be made by the Public Works Director when the work has been completed.



**ARTICLE G-46**      **CHANGES IN THE WORK**

The Township, without invalidating the Contract, may order extra work or make changes by altering, adding to or deducting from the work, the Contract Sum being adjusted accordingly. All such work shall be executed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

In giving instructions, the Public Works Director shall have authority to make minor changes in the work not involving extra cost, and not inconsistent with the purposes of the work, but otherwise, except in an emergency endangering life or property, no extra work of change shall be made unless in pursuance of a written order by the Public Works Director, and no claim for an addition to the Contract Sum shall be valid unless the additional work was so ordered.

The Contractor shall proceed with the work as changed and the value of any such extra work or change shall be determined as provided for in the Agreement.

**ARTICLE G-47**      **CLAIMS FOR EXTRA COST**

If the Contractor claims that any instructions by drawings or otherwise issued after the date of the Contract involved extra cost under this Contract, he shall give the Public Works Director written notice thereof within 7 days after the receipt of such instructions and in any event before proceeding to execute the work, except in emergency endangering life or property, and the procedure shall then be as provided for changes in the work. No such claim shall be valid unless so made.

**ARTICLE G-48**      **USE OF COMPLETED PORTIONS**

The Township shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the time for completing the entire work or such portions which may not have expired; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the work, the Contractor shall be entitled to such extra compensation or extension of time or both, as the Public Works Director may determine.

**ARTICLE G-49**      **CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

If the work should be stopped under an order of any court, or other public authority, for a period of three months, through no act or fault of the Contractor or of anyone employed by him, or if the Public Works Director should fail to issue any estimate for payment within thirty (30) days after it is due, or if the Township should fail to pay the Contractor within thirty (30) days of maturity and presentation any sum certified by the Public Works Director or awarded by arbitrators, then the Contractor may, upon seven days written notice to the Township and the Public Works Director, stop work or terminate this Contract and recover from the Township payment for all work executed, plus any loss sustained upon any plant or materials plus reasonable profit and damages.

**ARTICLE G-50**      **LIENS**

Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Township a complete release of all liens arising out of this

Contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all the labor and materials for which a lien could be filed; but the Contractor may, if any sub-contractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Public Works Director, to indemnify the Township against any lien. If any lien remains unsatisfied after all payments are made, compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

**ARTICLE G-51**      **ASSIGNMENT**

Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder, without the previous written consent of the Public Works Director.

**ARTICLE G-52**      **LANDS FOR WORK**

The Township shall provide, as indicated on the plans and not later than the date when needed by the Contractor, the lands upon which the work under this contract is to be done, rights of way for access to same, and such other lands which are designated on the drawing for the use of the Contractor. Any delay in the furnishing of these lands by the Township shall be deemed proper cause for and equitable adjustment in both Contract price and time of completion.

**ARTICLE G-53**      **SANITARY PROVISIONS**

The Contractor shall provide and maintain in a neat and sanitary condition, such accommodations for the use of his employees as may be required to comply with the regulations of the local Board of Health, or other bodies having jurisdiction.

**ARTICLE G-54**      **FINAL CLEANING UP**

Upon completion of the work and before acceptance and final payment will be made, the Contractor shall clean up and remove all surplus and discarded materials, rubbish and temporary structures incidental to the work, and leave the site in a neat and presentable condition.

**ARTICLE G-55**      **PREVAILING WAGES**

The Contractor shall comply in all respects with the NEW JERSEY PREVAILING WAGE ACT, CHAPTER 150 OF THE LAWS OF 1963.

The successful contractor shall insure that all workmen needed to successfully perform this project shall be paid no less than the prevailing wage rates as set for this locality by the Commissioner of Labor and Industry and made a part hereof.

The public work contractors and subcontractors shall submit to the Township certified payroll records each payroll period within ten (10) days of the payment of wages. A certified payroll record is defined as "a payroll record which is attested to by the employer, or the owner of the company doing business as the employer, or a corporate officer of such company, or as authorized agent of the employer".

The State approved Payroll Certification form is included at the beginning of the "State Wage Rate" section.

In the event that it is determined that any workmen employed by the Contractor or any sub-contractor covered by this Contract are paid less than the required wage rates the Township may terminate the Contractor's right to proceed with the work or such part of the work as to which there has been a failure to pay required wages and prosecute the work to completion or otherwise. The Contractor and Sureties shall be liable to the Township for any excess costs occasioned thereto.

Prior to final acceptance of the project by the Township, the Contractor shall file with the Township Treasurer a sworn written statement certifying to the amounts then due or owing to any and all workmen for wages due on account of this project. The statements shall set forth the names of the persons whose wages are unpaid and amount due each.

A copy of the "Prevailing Wage Rate Determination, Pursuant to Chapter 150 of the Laws of 1963", supplied by the Department of Labor and Industry is on file in the Public Works Director's Office. Copies are available to the successful Contractor upon request.

**ARTICLE G-56**      **PLAN, EXPERIENCE & EQUIPMENT QUESTIONNAIRE**

All bidders on all contracts are required to submit plan, experience and equipment questionnaires with their proposals on the forms provided. Said bidders shall answer all questions therein legibly and completely in ink. The information contained therein will be considered by the Governing Body prior to contract award to the "lowest responsible bidder".

**ARTICLE G-57**      **NON-COLLUSION AFFIDAVIT**

Form must be completed and submitted with all bid proposals.

**ARTICLE G-58**      **QUALIFICATIONS OF BIDDERS**

In determining qualifications of Bidder, Owner will consider his record in performance of any contracts for construction work into which he may have entered with Owner or with other public or private bodies and Owner expressly reserves the right to reject his bid, if his record discloses that he has not properly performed such contracts, in the opinion of the Owner, or has habitually and without just cause neglected payment of bills or has otherwise disregarded his obligation to sub-contractors, material, men or employees.

Owner will make such investigation as he deems necessary to determine ability of bidder to perform work and bidder shall furnish to Owner all such information and data for this purpose as Owner may request.

**ARTICLE G-59**      **PUBLIC WORKS CONTRACTOR REGISTRATION ACT  
& BUSINESS REGISTRATION CERTIFICATE**

**PUBLIC WORKS CONTRACTOR REGISTRATION**

All named contractors and sub-contractors must be registered with the Department of Labor pursuant to the Public Works Contractor Registration Act at the time the proposal is received, or the proposal will be determined to be non-responsive.

Any non-listed contractor or sub-contractor must be registered with the Department of Labor prior to physically starting work.

#### **BUSINESS REGISTRATION CERTIFICATION**

In accordance with State Law P.L. 2004, c57, all business organizations that do business with a local contracting agency are required to be registered with the State and provide proof of that registration to the contracting agency before the contracting agency may enter into a contract with the business.

**“ALL NAMED/LISTED CONTRACTORS AND SUB-CONTRACTORS MUST SUBMIT A COPY OF THEIR PROOF OF REGISTRATION WITH BIDS.”**

#### **NEW JERSEY BUSINESS REGISTRATION REQUIREMENTS:**

The contractor shall provide written notice to its subcontractors and suppliers of the responsibility to submit proof of business registration to the contractor. The requirement of proof of business registration extends down through all levels (tiers) of the project.

Before final payment on the contract is made by the contracting agency, the contractor shall submit an accurate list and the proof of business registration of each subcontractor or supplier used in the fulfillment of the contract, or shall attest that no subcontractors were used.

For the term of the contract, the contractor and each of its affiliates and a subcontractor and each of its affiliates [N.J.S.A. 52:32-44(g)(3)] shall collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act on all sales of tangible personal property delivered into this State, regardless of whether the tangible personal property is intended for a contract with a contracting agency.

A business organization that fails to provide a copy of a business registration as required pursuant to Section 1 of P.L. 2001, c. 134 (C.52A:32-44 et al) or subsection e or f of Section 92 of P.L. 1977, c. 110 (C.5:12-92), or that provides false business registration information under the requirements of either of those sections, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

#### **ARTICLE G-60 LOCAL PUBLIC CONTRACTS LAW**

TITLE 40A:11 REVISED STATUTES OF THE STATES OF NEW JERSEY, COMMONLY KNOWN AS THE “LOCAL PUBLIC CONTRACTS LAW” REQUIRES SPECIFIC ACTION OR ATTENTION TO ITS VARIOUS SECTION. EACH PROSPECTIVE BIDDER SHALL FAMILIARIZE HIMSELF WITH THIS LAW.

CHAPTER 40A:11-22 REQUIRES THE BIDDER TO SUBMIT A BONDING COMPANY CERTIFICATE GUARANTEEING FUTURE BONDING IF CONTRACTOR IS SUCCESSFUL IN HIS BID.

Each bidder is hereby directed to enclose within his bid pack, attached to the rear cover, a certificate of his Bonding or Surety company stating that it will provide the Contractor with the required Performance bond necessitated by his bid.

CHAPTER 40A:11-24 PROVIDES THAT THE MUNICIPALITY SHALL AWARD CONTRACT WITHIN 60 DAYS OF RECEIPT OF BIDS UNLESS EXTENDED IN TIME BY APPROVAL OF THE THREE LOWEST BIDDERS.

**ARTICLE G-61**      **AFFIRMATIVE ACTION REQUIREMENTS**

See Exhibit B – DOCUMENT V – CONSTRUCTION CONTRACTS

**ARTICLE G-62**      **DISCLOSURE**

There is to be submitted by prospective bidders a statement setting forth in the names and addresses of all stockholders in the corporation or partnership who own ten (10) or more of its stock of any class or of any individual partners in the partnership who own a ten percent (10%) or greater interest therein, as the case may be. If one or more such stockholders or partnership is itself a corporation or partnership, the stockholders holding ten percent (10%) or more of that corporations stock, or the individual partners owning ten percent (10%) or greater interest in that partnership, as the case may be, shall also be listed.

**ARTICLE G-63**      **MANDATORY INQUIRY REQUIREMENTS**

THE BIDDER IS REQUIRED TO REVIEW ALL CONDITIONS OF THE BID SPECIFICATIONS WITH REGARD TO QUERIES. ALL ITEMS ON BID SUBMISSION MUST BE ANSWERED AND SIGNED BY THE BIDDER ON THE ATTACHED FORMS. IN THE EVENT THAT ALL CONDITIONS ON THE BID FORMS ARE NOT ANSWERED AND/OR SIGNED BY THE BIDDER, THE BID WILL BE REJECTED.

**ARTICLE G-64**      **WORK HOURS/INSPECTION**

The contractor shall work only during the normal work hours of the township unless authorized by the Public Works Director to do otherwise. Overtime shall be considered those hours before 7:00 am and after 3:30 pm Monday thru Friday. In addition, Saturday, Sunday and all Township holidays will be considered overtime.

**ARTICLE G-65**      **N.J.D.O.T. STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION**

The Standard Specifications for Road and Bridge Construction – 2007 as amended, are hereby incorporated by reference. The full text of said Specifications, shall be considered to be contained herein and the provisions, requirements, procedures and penalties, of same, shall apply to all aspects of work performed under this contract.

**ARTICLE G-66**      **INCIDENTAL WORK**

All construction shown on the plans shall be included in the price bid for this project. In the event of work which is not specifically itemized in the "Proposal", said work will be considered incidental to the project and no additional payment shall be made.

**ARTICLE G-67**      **EQUIVALENT MATERIALS AND EQUIPMENT**

Whenever, in the following specifications, any material or article, or the make or distributor thereof, is specified by name, this is done only for the purpose of more clearly defining the kind and quality desired, and it is to be understood that the approved equivalent will be equally acceptable.

It shall be the responsibility of the bidder to supply manufacturer's literature, samples, specifications, data, and any and all other supportive information which will enable the Owner to determine equivalency with the specified material, article or distributor. Said equivalency shall not only include performance, but shall also include compatibility and interchangeability with existing Township equipment.

**ARTICLE G-68**      **SOIL EROSION CONTROL**

Prior to the beginning of any construction, the contractor shall furnish, deliver and install all the soil erosion control devices as shown on the drawings. Additional soil erosion control devices may be required subsequent to certain construction, such as, storm sewer and/or inlets.

The erosion control devices shall remain in place until directed to remove same by the Engineer.

The cost for any required soil erosion control or devices and/or procedures, shall be included in the prices of the proposed work; the distribution of same is the contractor's prerogative. No separate payment shall be made for this item.

**ARTICLE G-69**      **WORKERS AND COMMUNITY RIGHT TO KNOW ACT**  
**N.J.S.A. 34:5A-1 ET SEQ.**

**MATERIAL SAFETY DATA SHEET:**

Per N.J.S.A. 34:5A-1 ET SEQ. (Workers and Community Right to Know Act) the State Department of Health has adopted a Workplace Hazardous Substance List (N.J.A.C. 8:59-9) which includes 2051 substances that pose a threat to the health and safety of employees. Therefore, under the provisions of N.J.A.C. 8:59-7, each bidder must furnish to the City of Burlington a "MATERIAL SAFETY DATA SHEET" for each product they supply which contains a substance listed on the Hazardous Substance List (N.J.A.C. 8:59-9). These MATERIAL SAFETY DATA SHEETS must be submitted to the Business Administrator upon receipt of Contract. The City of Burlington reserves the right to request a copy of the applicable MATERIAL SAFETY DATA SHEET be forwarded with the delivery of a product to the appropriate department. Furthermore, under the provisions of N.J.A.C. 8:59-5, each product shall have a label affixed or stenciled onto any container that contains such substances and is going to be supplied to the City of Burlington.

**ARTICLE G-70**      **AMERICAN GOODS AND PROJECTS**

Each bidder is cautioned that Local Public Contracts Law (N.J.S.A. 40A-11-1 et seq.) provides that only manufactured and farm products of the United States, whenever available, be used in all work contracted for by a County or Municipality in which public funds will pay any part of all of the costs.

**ARTICLE G-71**      **AMERICAN WITH DISABILITIES ACT (ADA)**

Each successful bidder warrants that it is in compliance with the Americans with Disabilities Act (ADA) Public Law 101-336) and that it will, in carrying out the requirements of this contract or grant, comply in all aspects with the provisions of the Act and its implementing regulations.

**WILLIAM R. ALLEN SCHOOL  
REHABILITATION & RESTORATION PROJECT  
CONTRACT FORMS FOR  
COMMUNITY DEVELOPMENT PROJECTS  
REQUIRED BY:  
BURLINGTON COUNTY DEPARTMENT  
OF HOUSING AND  
COMMUNITY DEVELOPMENT  
(THE FOLLOWING PAGES MUST BE  
INCLUDED IN ALL CONTRACTS AND  
SUB-CONTRACTS)**



## CONTRACT FOR COMMUNITY DEVELOPMENT PROJECT

### SUMMARY

Listed below are the terms, conditions and provisions which must be followed for projects funded in whole or in part with Community Development funds. A more complete explanation of each requirement is to be found in the following pages.

### GENERAL TERMS AND CONDITIONS

1. Lead based paint prohibition
2. Compliance with Air and Water Acts
3. Interest of members of Congress
4. Interest of members, officers or employees (present or former)
5. Architectural Barriers Act
6. Provisions for training, employment and business opportunities
7. Termination contract for cause
8. Termination for convenience of contracting entity
9. Changes
10. Assignability
11. Reports and Information
12. Records and Audits
13. Copyrights
14. Patent rights
15. Compliance with local laws
16. Indemnification
17. Equal Employment Opportunity
18. Performance Bonds
19. Payment Bond
20. Bid guarantee
21. Warning of Federal Wage Rates

### FEDERAL LABOR STANDARDS PROVISIONS

#### Applicability

- A.
  1. Minimum Wages
  2. Withholding
  3. Payrolls
  4. Apprentices and Trainees.
  5. Compliance with Copeland Act Requirements
  6. Subcontracts
  7. Contract termination; debarment
  8. Compliance with Davis Bacon and Related Act Requirements
  9. Disputes concerning labor standards
  10. Certificate of Eligibility
  11. Complaints, Proceedings or Testimony by Employees
- B. Contract Work Hours and Safety Standards Act
  1. Overtime requirements
  2. Violation; liability for unpaid wages, liquidated damages
  3. Withholding for unpaid wages and liquidated damages
  4. Subcontracts

C. Health and Safety

CONTRACT FOR COMMUNITY DEVELOPMENT PROJECTS  
General Terms and Conditions

1. LEAD BASED PAINT PROHIBITION

The use of lead based paint on applicable surfaces of any residential structure undergoing construction or reconstruction through funds provided in whole or in part under Title I of the Housing and Community Development Act of 1974 is prohibited. The contractor shall conform to the provisions of 24 CFR 35 and the "Lead Based Paint Poisoning Prevention Act" 24 U.S.C. 481(3).

2. COMPLIANCE WITH AIR AND WATER ACTS

Contracts and sub-grants amount in excess of \$100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported to the grantor agency and the Regional office of the Environmental Protection Agency.

3. INTEREST OF MEMBERS OF CONGRESS

No member of or delegate to the Congress of the United States of America or resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise therefrom, but this provision shall not be construed to extend this contract if made with a corporation for its general benefit.

4. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES

No member, officer or employee of the County, municipality or the governing body of the locality in which the project is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project shall, during his tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

5. ARCHITECTURAL BARRIERS ACT AND THE AMERICANS WITH DISABILITIES ACT

- a. The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR part 40 for residential structures, and Appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

- b. The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires that removal of architectural barriers and communications barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

6. PROVISIONS FOR TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES

- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment are given to lower income residents of the project areas and contracts for work in connection with the project to be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the area of the project.
- b. Parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said organization or workers' representatives of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not sub-contract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractor and subcontractor, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified in 24 CFR 135.

7. TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the contractor shall fail to fulfill in timely and proper manner his obligations under this contract, or if the contractor shall violate any of the covenants, agreements, or stipulations of this contract, the contracting entity shall thereupon have the right to terminate this contract by giving written notice to the contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. On such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the contractor under this contract shall, at the option of the contracting entity, become its property and the contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the contractor shall not be relieved of liability to the contracting entity for damages sustained by the contracting entity by virtue of any breach of the contract by the contractor, and the contracting entity may withhold any payments to the contractor for the purpose of set-off until such time as the exact amount of damages due the contracting entity from the contractor is determined.

8. TERMINATION FOR CONVENIENCE OF CONTRACTING ENTITY

The contracting entity may terminate this contract at any time by giving at least 10 days notice in writing from the contracting entity to the contractor. If the contract is terminated by the contracting entity as provided herein, the contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the contractor covered by this contract, less payments of compensation previously made: provided, however, that if less than 60% of the services covered by this contract have been performed upon the effective date of such termination, the contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under the contract incurred by the contractor during the contract period, which are directly attributable to the uncompleted portion of the services covered by this contract.

9. CHANGES

The contracting entity may, from time to time, request changes in the scope of the services of the contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the contractor's compensation, which are mutually agreed upon by and between the contracting entity and the contractor shall be incorporated in written amendments to this contract.

10. ASSIGNABILITY

The contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or notation) without the prior written consent of the contracting entity thereto: provided, however, that claims for money due or to become due the contractor from the contracting entity under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the contracting entity.

11. REPORTS AND INFORMATION

The contractor, at such times and in such forms as Burlington County, the Secretary of HUD and/or the contracting entity, shall produce such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

12. RECORDS AND AUDITS

The contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the contract and such other records as may be deemed necessary by the contracting entity, Burlington County, or the Department of HUD to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the contracting entity, Burlington County, or the Department of HUD or the Comptroller General of the United States or any authorized representative, and will be retained for three (3) years after the expiration of this contract unless permission to destroy them is granted by contracting entity, Burlington County and HUD.

13. COPYRIGHT

No report, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the contractor.

14. PATENT RIGHTS

In the event that any invention, improvement, or discovery may be conceived or first actually reduced to practice by the contractors or its employees in the course of or under this contract or any subcontract, the invention, improvement, or discovery, together with all information, designs, specifications, know-how, data, patent rights and findings in connection therewith which arise or where developed in the course of the performance of this contract or any subcontract hereunder, shall be made available to the public through dedication, assignment to the Government of the United States of America, or such other means as HUD shall determine.

15. COMPLIANCE WITH LOCAL LAWS

The contractor shall comply with all applicable laws, ordinances, and codes of the state and local government.

16. INDEMNIFICATION

The contractor shall indemnify and hold harmless the contracting entity and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

In any and all claims against the contracting entity or any of its agents or employees by any employee of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the contractor or any subcontractor under workmen's compensation, disability benefit act or other employee benefit acts.

17. EQUAL EMPLOYMENT OPPORTUNITY

- a. This clause applies to contracts not exceeding \$10,000.

The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin. The contractor shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for work performed under the terms and conditions of this contract. A breach of this provision may be grounds for contract termination.

- b. This clause applies to contracts in excess of \$10,000.

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or

recruitment advertising; layoff or termination; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this equal Opportunity clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (3) The contractor will send to each labor union or representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or worker's representative of the contractor's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and all of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the Equal Opportunity clause of this contract, or with any such rules, regulations, orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Contractor will include the statement preceding Subparagraph 91 of the provisions of subparagraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as HUD may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

- (8) A breach of paragraphs (1), (2), (3), (4), (5), (6) or (7) may be grounds for termination of the contract and for disbarment as provided in 29 CFR 5.6.

18. PERFORMANCE BONDS

The contractor shall post a performance bond for 100% of the contract price.

19. PAYMENT BOND

The contractor shall post a payment bond of 100% of the contract price to assure payment of all persons supplying labor and material in the execution of work provided by the contract, ordinances, and codes of the State and local government.

20. BID GUARANTEE

The contractor shall post a bid guarantee of 5% of the bid price as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

21. WARNING ON FEDERAL WAGE RATES

Contractors shall note that the Federal Government issues new federal wage rates on a regular basis. Community Development policy is that the date of the Resolution awarding the contract will be the date used for determination of the General Wage Decision Modification for this contract. The current General Wage Decision Modification is contained in this bid proposal, however, the wage rates in effect at the time of the contract award shall govern. Furthermore, if an unusual amount of time is allowed to pass between contract award and start of project, the prevailing wage modification will be updated at the discretion of the Community Development Office.

NOTE: It is recommended that this paragraph be included in all instructions to bidders.



**FEDERAL LABOR STANDARDS  
PROVISIONS**

**Federal Labor Standards Provisions U.S. Department of Housing  
and Urban Development  
Office of Labor Relations**

Previous editions are obsolete  
form HUD-4010 (06/2009)  
ref. Handbook 1344.1

**Applicability**

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4).

Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional

classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part form HUD-4010 (06/2009) ref. Handbook 1344.1 of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

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

benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

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

**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

**(c)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees.**

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

expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for

apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about

to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

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

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

## SECTION 3 NOTICE

This Contract is subject to US Department of Housing and Urban Development, Community Development Block Grant Program regulations and Federal Labor Standard provisions.

NOTICE IS HEREBY GIVEN THAT:

a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

b. The parties to this contract agree to comply with HUD's regulations in 24 CFR 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

c. The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

d. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause upon a finding that the subcontractor is in violation of the regulation in 24 CFR 75. The contractor will not subcontract with any subcontractor where the contractor has notice



or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR 75.

e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected by before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR 75.

f. Noncompliance with HUD's regulations in 24 CFR 75 may result in sanctions, termination of this contractor for default and debarment or suspension from future HUD assisted contracts.

g. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. parties to this contract that are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

THIS NOTICE MUST APPEAR IN ALL BID ADVERTISEMENTS AND NOTICES TO BIDDERS.

# **FORM 1**

## **MBE WBE SOLICITATION FORM**

THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE BID. FAILURE TO SUBMIT THE PROPERLY COMPLETED FORM MAY BE GROUNDS TO DISMISS THE BID. THERE ARE TWO OPTIONS FOR COMPLETING THE FORM:

**1. If you are not planning to use any subcontractors you can indicate that on the form. Further, if cannot find MBE/WBE material suppliers for products you will use on the job, state this on the form.**

**OR**

**2. Identify subcontractors and material suppliers that have been contacted EVEN IF you do not intend to utilize their products or services on the job.**

At the end of the job, you will be asked to identify what if any MBE WBE businesses participated in the job. Failure to properly complete the form using one of the above methods will result in an incomplete bid submission.

<b>Subrecipient:</b>		<b>Fiscal Year:</b>		<b>Name of Project:</b>			
<b>Prime Contractor:</b>		<b>Is prime contractor MBE/WBE? (circle) If MBE, Identify race:</b>					
<b>Total Value of Contract to Prime Contractor:</b>							
Name Address and Telephone number of MBE/WBE sub or vendor	Business Enterprise		\$ Value of Procurement to Sub-Contractor	Date of Procurement	Type of Product or Service	FEIN	DUNS
	MBE (Race)	WBE					

## FORM 2

### SECTION 3 WORKER CERTIFICATION FORM

A Section 3 Worker seeking the preference in training and employment provided by this part shall certify or submit evidence to the recipient contractor or subcontractor that the person is a Section 3 Worker, as defined in Section 24 CRF 75.

I \_\_\_\_\_ (Print Name)

\_\_\_\_\_ I am employed by a Section 3 business concern

\_\_\_\_\_ I am a section 3 worker living within the service area of the project: or

\_\_\_\_\_ A YouthBuild participant

***The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction. Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.***

FY 2021 – HOUSEHOLD INCOME GUIDELINES

Place a Check on the Applicable Line	Family Size	Low Income *
	1	
	2	
	3	
	4	
	5	
	6	
	7	
	8	

\* Circle the appropriate column based on household size and income – income limits are attached and/or can be downloaded from the [www.hud.gov](http://www.hud.gov) website.

I hereby certify that the information provided by me to be true and correct and understand any falsification of any of the information could subject me to disqualification from participation and punishment under the law.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**FORM 3**  
**TARGETED SECTION 3 WORKER**  
**CERTIFICATION FORM**

A Targeted Section 3 Worker seeking the preference in training and employment provided by this part shall certify or submit evidence to the recipient contractor or subcontractor that the person is a Section 3 Worker, as defined in Section 24 CRF 75.

I \_\_\_\_\_ (Print Name)

\_\_\_\_\_ I am employed by a Section 3 business concern

\_\_\_\_\_ I am a section 3 worker living within the service area of the project: or

\_\_\_\_\_ A YouthBuild participant

***The status of a Targeted Section 3 worker shall not be negatively affected by a prior arrest or conviction. Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.***

**FY 2021 – HOUSEHOLD INCOME GUIDELINES**

Place a Check on the Applicable Line	Family Size	Low Income *
	1	
	2	
	3	
	4	
	5	
	6	
	7	
	8	

\* Circle the appropriate column based on household size and income – income limits are attached and/or can be downloaded from the [www.hud.gov](http://www.hud.gov) website.

I hereby certify that the information provided by me to be true and correct and understand any falsification of any of the information could subject me to disqualification from participation and punishment under the law.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**FORM 4**  
**SAMPLE SECTION 3 BUSINESS AND EMPLOYMENT  
NOTICE**

*(Instructions: Publish as a display advertisement in the local paper's non-legal section or post at the local government and other Section 3 area locations.)*

*(Insert Locality's name)* is preparing to carry out the *(insert Name of Project)* through the use of Community Development Block Grant Funds. In the implementation of this project the following job types may be available: *(Insert List of Job Classifications to be used during project)*

All job openings will be posted at *(local government office or list other posting locations)*. To the greatest extent feasible, employment and training positions will be made available to qualified persons who permanently reside in *(Insert the County's or local municipality name as Section 3 area)*.

Persons qualified for the jobs listed should register at the following location: *(Insert Name and Address of posting locations and/or Other Locations)*

Additionally, the following contracts and procurements will/may be made and to the greatest extent feasible, businesses located in and owned by persons residing in *(Insert the County's name as Section 3 area)* will be utilized:

*(Insert list of construction, non-construction, and service contracts to be procured during the project. Also, insert list of construction subcontracts, major, specific equipment and general types of materials to be used during the project.)*

All above-referenced procurements will be made on a competitive basis. The names of businesses who respond to this notice will be included on procurement lists for this project. Names of job seekers will be given to contractors.

Any person residing or firm located in the above-named areas may request to participate in procurement opportunities associated with this project by contacting *(Insert local contact information)* within ten (10) days of this notice.

## **FORM 5**

### **SAMPLE SECTION 3 PLAN**

*(Name of contractor)* agrees to implement affirmative steps to comply with the Section 3 requirements set forth at 24 CFR 75 directed at increasing the utilization of lower income residents and businesses within the City.

- A. To implement Section 3 requirements by seeking the assistance of local officials in determining the exact boundaries of the applicable project area
- B. To attempt to recruit from within the City/County the necessary number of lower income residents through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists
- D. To insert this Section 3 plan in all bid documents, and to require all bidders to submit a Section 3 affirmative action plan including utilization goals and the specific steps planned to accomplish these goals
- E. To ensure that all appropriate project area business concerns are notified of pending subcontractual opportunities
- F. To maintain records, including copies of correspondence, memoranda, etc., which document that all the above affirmative action steps have been taken.
- G. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 plan
- H. To list all permanent workforce for this project by job title
- I. To list all projected workforce needs for this project by job classification and time frame for potential hire.

As officers and representatives of *(Name of contractor)* we, the undersigned, have read and fully agree to the above and become a party to the full implementation of this program.

---

Print Name

Signature

Date

# FORM 6

## **CONTRACTOR PERMANENT WORKFORCE FORM**

This form is used to determine the Section 3 Workers already employed by the bidding contractor. This form may be compared to Davis -Bacon Payrolls for cross referencing purposes.

Project

Name: \_\_\_\_\_

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

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

Employee Name	Job Title	Certified Section 3 Worker		Monthly Salary	Salary Below 80% of Median	
		YES	NO			

I certify the above employees are permanent employees of the undersigned contractor. I certify the above employees are on our regular monthly payroll and have their W-2 tax forms for our records. These records will be available to the city/county for the above referenced project for verification purposes. I understand that falsifying information is perjury and subject to legal ramifications.

\_\_\_\_\_

Print Name

Signature

Date

**FORM 7**  
**SECTION 3 CONTRACTOR ESTIMATED PROJECT  
 WORKFORCE BREAKDOWN**

\*This form may be used to determine future hiring needs by  
 the contractor.

<b>Job Category</b>	<b>Total Estimated Positions</b>	<b>No. of Positions Currently Occupied by Permanent Employees</b>	<b>No. of Vacant Positions</b>	<b>No. of Positions to be Filled with Targeted and/or Section 3 Workers and estimate of hire date.</b>
Officers/Supervisors				
Professionals				
Technicians				
Office				
Clerical				
Trade				
Journeyman				
Apprentices				
Trainees				
Others				
Others				
Others				
<b>Total</b>				





## **FORM 9**

### **ALL SECTION 3 COVERED CONTRACTS SHALL INCLUDE THE FOLLOWING CLAUSE**

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD- assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- C. The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR 75.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR 75.
- F. Noncompliance with HUD's regulations in 24 CFR 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

# **FORM 10**

## **SECTION 3 REPORTING REQUIREMENTS**

### **A. Reporting for Labor Hours**

(1) For Section 3 projects, recipients must report in a manner prescribed by HUD:

- (i) The total number of labor hours worked;
- (ii) The total number of labor hours worked by Section 3 workers; and
- (iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to § 75.31.

(3) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked on a Section 3 project, including labor hours worked by any subrecipients, contractors and subcontractors that the recipient is required, or elects pursuant to paragraph (a)(4) of this section, to report.

(4) Recipients reporting under this section, as well as subrecipients, contractors and subcontractors who report to recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(5) Recipients may report their own labor hours or that of a subrecipient, contractor, or subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting.

**B. Additional reporting if Section 3 benchmarks are not met.** If the recipient's reporting under paragraph (a) of this section indicates that the recipient has not met the Section 3 benchmarks described in § 75.23, the recipient must report in a form prescribed by HUD on the qualitative nature of its activities and those its contractors and subcontractors pursued. Such qualitative efforts may, for example, include but are not limited to the following:

- (1) Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- (2) Provided training or apprenticeship opportunities.
- (3) Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- (4) Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- (5) Held one or more job fairs.
- (6) Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
- (7) Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
- (8) Assisted Section 3 workers to obtain financial literacy training and/or coaching.
- (9) Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.

(10) Provided technical assistance to help Section 3 business concerns understand and bid on contracts.

(11) Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.

(12) Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.

(13) Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.

(14) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

C. *Reporting frequency.* Unless otherwise provided, recipients must report annually to HUD under paragraph (a) of this section, and, where required, under paragraph (b) of this section, on all projects completed within the reporting year in a manner consistent with reporting requirements for the applicable HUD program.

**ENGINEER/ARCHITECT CHECKLIST FOR CDBG PROJECTS**

Projects funded in whole or in part with CDBG funds must comply with the following procedures and standards, as applicable; and, initial determinations of compliance and applicability are to be made by the Subrecipient, which the City has the discretion but not obligation to overrule.

**I. Bid specs**

**A. Notice to bidders must contain this language:**

Prevailing wages established under the Davis-Bacon Act will apply to this contract, if the contract and proposal meet the standards for applicability. Compliance with the provisions of Section 3 of the HUD Act of 1968 will be a requirement of this contract, if the contract and proposal meet the standards for applicability. The contract documents contain requirements addressing the Davis Bacon Act, prevailing wage, labor standards and wage requirements, nondiscrimination in hiring practices, goals for minority and female participation, MBE and WBE participation, participation by Section 3 resident and businesses, notice of prohibition on use of federal disbarred vendors, and any other legally required related matters.

**B. Instructions to Bidders will contain references to:**

Davis Bacon wages

NOTE: NJ law requires that the contractor pay the HIGHER of State prevailing wages or Davis-Bacon, for each class of worker. For further details, please see: [WageDeterminationsOnLine.gov](http://www.wdol.gov/dba)  
<http://www.wdol.gov/dba>

MBE/WBE Solicitation

The MBE/WBE Solicitation form MUST be completed and submitted with the bid. Failure to include this form in the bid will be grounds to disqualify a bid. If the Contractor does not intend to use a subcontractor and there are no MBE/WBE material providers in the area, the form must so indicate. Otherwise, attempts to contact MBE/WBE subcontractors and material providers must be documented. MBE/WBE lists can be obtained from the State of New Jersey website:  
<http://www.state.nj.us/transportation/business/civilrights/dbe.shtml>

Disadvantaged Business Enterprise (DBE)	Emerging Small Business Enterprise (ESBE)	Small Business Enterprise (SBE)
<p>The <u>New Jersey Unified Certification Program Directory</u> is the only recognized directory of certified DBE firms in the State of New Jersey. <a href="http://www.njucp.net/">http://www.njucp.net/</a></p>	<p>The <u>NJDOT ESBE Directory</u> is the only recognized directory of certified ESBE firms in the State of New Jersey. <a href="http://50.62.131.238/Productions/NJDOT_ESBE/biz_esbe/">http://50.62.131.238/Productions/NJDOT_ESBE/biz_esbe/</a></p>	<p><u>New Jersey Selective Assistance Vendor Information (NJSAVI)</u> is a database that identifies businesses that are registered as a SBE and/or certified as an M/WBE with the State of New Jersey.</p>

1. Section 3 Solicitation
  - a. Contracts over \$200,000 must contain Section 3 language:
  - b. Each bidder/proposer must include a Section 3 Opportunities Plan which indicates its commitment to meet resident hiring requirements. If a bidder/proposer fails to submit a Section 3 Opportunities Plan and the related data along with the bid/proposal, such bid/proposal will be declared as “non-responsive.”
2. Bonds must be obtained from companies listed in OMB Circular 570.  
[http://www.fms.treas.gov/c570/c570\\_a-z.html#n](http://www.fms.treas.gov/c570/c570_a-z.html#n)
3. “Notice of Intent to Prohibit Contracts with Contractors on the Federal Disbarred Vendor List” shall be included in every bid specification.

**C. Bid Specs must contain the following documents which can be emailed upon request:**

1. Part II Federal Terms and Conditions
2. Federal labor standard provisions
3. Davis – Bacon wage decision required for the project
4. Davis-Bacon payroll form
5. For projects over \$200,000, Section 3 forms and requirements must be included
6. MBE/WBE Solicitation form (including listing on the required submittals with the bid on the bid proposal form if this is part of the Engineer’s bid format)
7. Include a line for the contractor to indicate their **FEIN and DUNS numbers** on the proposal form

**D. Bid requirements**

1. NEVER bid or start construction on a project before receiving an executed Subrecipient contract or receipt of funding for the CDBG grant funds from the City of Hoboken.
2. All Bid documents shall be provided to the County of Burlington before being bid, with a ten day grace period so that the City may review to determine if the above referenced material is adequately contained in the bid documents. The City shall have no obligation to perform this review, nor may the Subcontractor rely on the City or the results of the City’s review in any bid contests or funding contests resulting for an improper bid.
3. A bid schedule shall be provided to the County of Burlington indicating the anticipated date of bid opening.
4. Subcontractors shall make every effort to solicit bids from MBE/WBE construction contractors. At a minimum, the notice of the bid shall be mailed to a list of MBE/WBE firms drawn from the State of New Jersey listings. A copy of this listing will be provided to the City of Hoboken.
5. If only one bid is received, the Subcontractor must contact the County of Burlington immediately and table the bid. Generally, awards to a single bidder are not permitted and require US HUD approval. Best practice recommendations are to extend the time to receive bids, contact potential bidders to obtain additional bids or determine why the bid only attracted one bidder. If the scope

is found to be too restrictive, then a modification will be required. The County of Burlington will submit a request to US HUD for an exception only if changing the conditions of bidding would not result in a different outcome and the municipal solicitor provides a written opinion that all of the procurement requirements under State of New Jersey and federal law have been met.

6. If wage rates change within 7 working days of the bid opening date, a bid addendum must be issued reflecting the new wage rates for the job. If wage rates change between day 6 and the date of execution of the contract, all bid proposals must be rejected and rebid to reflect the new wages.

#### **E. Bid review**

1. Once bids are received, the Bid Tabulation must be sent along with a copy of the bid specifications, any addendum, and all of the low bidder's documentation to the City.
2. The engineer shall review the bids and make a recommendation indicating bid reasonableness. A copy shall be provided to the City of Hoboken.
3. The low bidders shall be verified for eligibility to participate in a federal contract using [www.SAM.gov](http://www.SAM.gov). The resulting printout shall be sent to the City of Hoboken.
4. The Subrecipient must submit the Resolution Authorizing the Bid Award to the City of Hoboken

#### **F. Contracting**

1. A representative of the County of Burlington **must** be invited to attend the pre-construction conference.
2. All required forms must be signed before a proceed- to-work order is provided, including Section 3 required forms, if applicable.
3. A copy of the Contract and Notice to proceed must be provided to the County of Burlington immediately upon receipt of same.
4. The Contractor must provide a copy of the Labor Union statement of contributions or other documentation of the fringe benefits paid on behalf of workers on the job.
5. The contractor must provide weekly payrolls not less than 2 weeks after completion of each work week. Payrolls should be numbered 1, 2, 3 .... and FINAL and include statements of "no-work week" should there be gaps between weeks. Job classifications must indicate the federal wage decision classification, not the union classification.

#### **G. Compliance and Payment**

1. On-site interviews of workers must be completed. The engineer shall notify the County of Burlington when the contractor is planning to be on-site (preferably with several days' notice) so that a visit can be scheduled.
2. Any deficiencies between wages paid to workers plus fringe contribution and the federal Davis-Bacon wage rate must be corrected before the City issues payment. Municipalities should consider this before issuing payment.

The County of Burlington may make partial payments during the project or a single final payment may be made. The invoice to the County of Burlington **must** be made by the subrecipient and supported by documentation by the engineer that the work is completed and acceptable.

WILLIAM R. ALLEN SCHOOL  
REHABILITATION & RESTORATION PROJECT  
SAMPLE AIA CONTRACT



# DRAFT AIA® Document A101® - 2017

## 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)

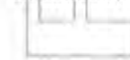
« »  
« »  
« »  
« »

The Owner and Contractor agree as follows.

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

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

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

**TABLE OF ARTICLES**

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

**EXHIBIT A INSURANCE AND BONDS**

**ARTICLE 1 THE CONTRACT DOCUMENTS**

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

**ARTICLE 2 THE WORK OF THIS CONTRACT**

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

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

The date of this Agreement.

A date set forth in a notice to proceed issued by the Owner.

Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

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

**§ 3.3 Substantial Completion**

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

[ « » ] Not later than « » ( « » ) calendar days from the date of commencement of the Work.

[ « » ] By the following date: « »

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

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

#### § 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price

#### § 4.4 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)

#### § 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

« »

#### § 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

« »

## 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 amount certified 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 of the amount certified shall be made by the Owner not later than « » ( « » ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values 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 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 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; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

« »

§ 5.1.7.1.1 The following items are not subject to retainage:  
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« »

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:  
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

« »

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:  
(Insert any other conditions for release of retainage upon Substantial Completion.)

« »

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 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 Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

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

« »

## § 5.3 Interest

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

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

« » % « »

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the 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 Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Arbitration pursuant to Section 15.4 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other *(Specify)*

« »

If the Owner and Contractor do not select a method of binding dispute resolution, 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.

### 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 A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

« »

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

### ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

*(Name, address, email address, and other information)*

« »  
« »  
« »  
« »  
« »  
« »

§ 8.3 The Contractor's representative:

*(Name, address, email address, and other information)*

« »  
« »  
« »  
« »  
« »  
« »

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

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

« »

§ 8.7 Other provisions:

« »

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203-2013 incorporated into this Agreement.)*

« »

.5 Drawings

Number	Title	Date

.6 Specifications

Section	Title	Date	Pages

.7 Addenda, if any:

Number	Date	Pages

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

.8 Other Exhibits:

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ « » ] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

[ « » ] The Sustainability Plan:

Title	Date	Pages

[ « » ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

- 9 Other documents, if any, listed below:  
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« »

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

OWNER (Signature)

« »« »

(Printed name and title)

CONTRACTOR (Signature)

« »« »

(Printed name and title)



# DRAFT 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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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

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

#### **§ 1.1.2 THE CONTRACT**

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

#### **§ 1.1.3 THE WORK**

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

#### **§ 1.1.4 THE PROJECT**

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

#### **§ 1.1.5 THE DRAWINGS**

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

#### **§ 1.1.6 THE SPECIFICATIONS**

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

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

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

#### **§ 1.1.8 INITIAL DECISION MAKER**

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

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

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

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

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

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

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

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

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

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

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

## ARTICLE 2 OWNER

### § 2.1 GENERAL

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

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

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

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

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

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

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

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

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

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

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

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

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

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

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

### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

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

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

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

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

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

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

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

### **§ 3.4 LABOR AND MATERIALS**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

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

### § 3.5 WARRANTY

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

### § 3.6 TAXES

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

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

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

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

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

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

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 ALLOWANCES**

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

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

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

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

### **§ 3.9 SUPERINTENDENT**

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

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

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

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

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

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

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

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be



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

### **§ 3.13 USE OF SITE**

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

### **§ 3.14 CUTTING AND PATCHING**

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

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

### **§ 3.15 CLEANING UP**

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

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

### **§ 3.16 ACCESS TO WORK**

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

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

### § 3.18 INDEMNIFICATION

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

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

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

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

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

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

### § 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

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

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

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

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

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

### § 5.3 SUBCONTRACTUAL RELATIONS

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

be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

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

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

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

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

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

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

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

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

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

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

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

#### **§ 6.2 MUTUAL RESPONSIBILITY**

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

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that

the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

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

### § 6.3 OWNER'S RIGHT TO CLEAN UP

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

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

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

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

### § 7.2 CHANGE ORDERS

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

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

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

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

.4 As provided in Section 7.3.7.

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

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

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

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

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

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

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

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

#### § 7.4 MINOR CHANGES IN THE WORK

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

## **ARTICLE 8 TIME**

### **§ 8.1 DEFINITIONS**

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

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

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

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

### **§ 8.2 PROGRESS AND COMPLETION**

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

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

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

### **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

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

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

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

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

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

### **§ 9.2 SCHEDULE OF VALUES**

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

### **§ 9.3 APPLICATIONS FOR PAYMENT**

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



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

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § 9.4 CERTIFICATES FOR PAYMENT

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

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

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

#### § 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

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

#### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding

dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### **§ 9.8 SUBSTANTIAL COMPLETION**

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

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

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

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

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

#### **§ 9.9 PARTIAL OCCUPANCY OR USE**

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

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

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

## § 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

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

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

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

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

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

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

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

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

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

#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

#### § 10.3 HAZARDOUS MATERIALS

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

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

extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

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

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

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

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

#### § 10.4 EMERGENCIES

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

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the

Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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

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

## § 11.2 OWNER'S LIABILITY INSURANCE

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

## § 11.3 PROPERTY INSURANCE

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

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

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

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

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

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

#### § 11.3.2 BOILER AND MACHINERY INSURANCE

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

#### § 11.3.3 LOSS OF USE INSURANCE

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

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

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

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

#### § 11.3.7 WAIVERS OF SUBROGATION

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

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



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

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

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 UNCOVERING OF WORK

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

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

#### § 12.2 CORRECTION OF WORK

##### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

##### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

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

nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2 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.

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

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

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

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

#### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

### ARTICLE 13 MISCELLANEOUS PROVISIONS

#### § 13.1 GOVERNING LAW

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

#### § 13.2 SUCCESSORS AND ASSIGNS

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

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

#### § 13.3 WRITTEN NOTICE

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

#### § 13.4 RIGHTS AND REMEDIES

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

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

### § 13.5 TESTS AND INSPECTIONS

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

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

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

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

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

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

### § 13.6 INTEREST

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

### § 13.7 TIME LIMITS ON CLAIMS

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

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

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

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

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

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

#### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

#### **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

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

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

#### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

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

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

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

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

#### **§ 15.1 CLAIMS**

##### **§ 15.1.1 DEFINITION**

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

##### **§ 15.1.2 NOTICE OF CLAIMS**

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

##### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

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

##### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

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

##### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

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

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

**§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

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

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

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

**§ 15.2 INITIAL DECISION**

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

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

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

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

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

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

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

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

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

### § 15.3 MEDIATION

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

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

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

### § 15.4 ARBITRATION

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

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

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

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

### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration

permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

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