

**LEGAL NOTICE**  
**Rocky River City School District**

This Invitation to Bid is also available on the Rocky River City School District's website:  
<http://www.rrcs.org>. Please click on the marked tab/link.

Restroom Partition Removal and Replacement and Related Work at Rocky River High School which is located at 20951 Detroit Rd. Rocky River OH. 44116. The Work includes all labor and materials for the following:

1. Removal of existing bathroom partitions
2. Replacement of approximately 42 stainless steel (diamond - 5wl textured) stainless partitions
3. Replacement of approximately 6 phenolic core partitions (Pool Application)

Mandatory walk-thru/site visit for Bidders: Monday, June 23, 2014 at 3:00 pm local time at the Rocky River High School, 20951 Detroit Road, Rocky River, Ohio 44116 (meet at the Main Entrance). A bidder's failure to attend the mandatory walk-thru/site visit shall render said bid nonresponsive.

Sealed bids will be received by the Office of the Treasurer, 1101 Morewood Parkway, Rocky River, Ohio 44116, until 1:00 pm on Monday, June 30, 2014 for this project. Bid documents and additional information shall be obtained from Adam Sywanyk, Supervisor of Facility Operations. Mr. Sywanyk may be reached by telephone at (440) 356-6019 or by email at [Sywanyk.Adam@rrcs.org](mailto:Sywanyk.Adam@rrcs.org).

The responsibility for timely and appropriate bid submission rests solely with each bidder. Sealed bids submitted by mail must be certified or registered with return receipt requested and properly sealed and clearly marked on the outside with the statement: "Restroom Partition Removal and Replacement and Related Work at Rocky River High School." Sealed bids received after the above appointed date and time will not be accepted. Each bid shall be accompanied by a Bid Bond payable to the Rocky River City Schools, drawn on a solvent bank or insurance company licensed to do business in the State of Ohio, for the full amount of the sealed bid or a certified check for 10% of bid amount per Section 153.54 of the Ohio Revised Code as a guarantee that if the bid is accepted a contract will be entered into and performed. Bid Bonds accompanying rejected bids will be returned upon award of the contract. No Bidder may withdraw his/her bid for a period of thirty (30) days from the date of the opening of the sealed proposals. The Owner reserves the right to reject any or all bids. Subject to the right of the Owner to reject any or all bids, the Owner will award the contract for the Work to the bidder who is determined to be responsible and who submits the lowest responsive bid in accordance with Section 9.312 of the Ohio Revised Code, taking into consideration accepted alternates, if any.

Rocky River City School District Board of Education  
An Equal Opportunity Employer  
By: Mr. Greg Markus, Treasurer

INSTRUCTIONS TO BIDDERS

Rocky River City School District

Restroom Partition Removal and Replacement and Related Work at Rocky River High School  
("Project")

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**A. BID DOCUMENTS**

The Bid Documents include, but are not limited to, the Instructions to Bidders, Bid Form, Legal Notice, Owner-Contractor Agreement, and any addenda. The Bid Documents shall become the Contract Documents, as defined in the Owner-Contractor Agreement, that govern the relationship between the successful bidder and the Owner when the Owner-Contractor Agreement is executed and will be referred to as the Contract Documents throughout these Instructions to Bidders.

**B. OWNER**

1. The Owner is: Rocky River City School District Board of Education  
1101 Morewood Parkway  
Rocky River, Ohio 44116
2. The Owner's Contact: Adam Sywanyk  
Supervisor of Facility Operations  
(440) 356-6019  
Sywanyk.Adam@rrcs.org

**C. PROJECT**

The Project consists of all labor, materials, and services necessary for the timely and proper completion of the Work described in the Bid Documents identified in the following section related to the Project, all in accordance with the Contract Documents.

**D. SPECIFICATIONS**

The Work includes all labor and materials for the following:

1. Removal of existing bathroom partitions
2. Replacement of approximately 42 stainless steel (diamond - 5wl textured) stainless partitions
3. Replacement of approximately 6 phenolic core partitions (Pool Application)

**E. PROJECT SCHEDULE**

Substantial and Final Completion of all Work on this Project shall be no later than Friday, August 8, 2014.

**F. ESTIMATE OF CONSTRUCTION COST**

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The estimated construction cost for the Project is \$75,000. The estimate of construction cost is provided for the bidder's information only and will be used by the Owner as a guide for award of contracts in light of the estimate of construction costs for the Project and related projects.

**G. BID DOCUMENTS**

1. Legal Notice
2. Instructions to Bidders
3. Bid Form
4. Owner-Contractor Agreement
5. Any addenda

The Contract Documents may be examined at the offices of the Rocky River City Schools, 1101 Morewood Parkway, Rocky River, Ohio 44116, may be obtained from Mr. Sywanyk and/or accessed on the Board's website at <http://www.rrcs.org>. Please click on the marked tab/link.

**H. MANDATORY PRE-BID MEETING**

Mandatory walk-thru/site visit for bidders: Monday, June 23, 2014 at 3:00 pm local time at the Rocky River High School, 20951 Detroit Road, Rocky River, Ohio 44116 (meet at the RRHS Main Entrance). A bidder's failure to attend the mandatory walk-thru shall render said bid nonresponsive.

**I. PREPARATION OF BIDS**

1. All bids must be submitted on the "Bid Form" furnished with the set of Contract Documents.
2. All blank spaces shall be filled in, in ink or typewritten, in words and figures, and in figures only where no space is provided for words, and signed by the bidder. The wording on the Bid Form shall be used without change, alteration or addition. Any change in the wording or omission of specified accompanying documents may cause the bid to be rejected. In the case of a conflict between the words and figures for the amounts stated on the Bid Form, the amount shown in words shall govern. Notwithstanding the foregoing, omissions or misspellings of words will not render the words ambiguous when the bidder's intention and the meaning of the words are clear.
3. Bidders shall note receipt of any Addenda on the Bid Form.
4. Each bidder shall submit one (1) copy of its bid to the Owner. Bids shall be signed with the name typed or printed below the signature. Bids shall not be submitted by

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facsimile transmission. A bidder that is a corporation shall sign its bid with the legal name of the corporation followed by the name of the state of incorporation and the legal signature of an officer authorized to bind the corporation to a contract.

5. Bids shall be enclosed in a sealed opaque envelope with the bidder's name, and title of Project printed in the upper left hand corner, and addressed as follows:

Treasurer – Rocky River City School District Board of Education  
1101 Morewood Parkway  
Rocky River, Ohio 44116  
Attention: Greg Markus

6. The bidder shall take the following precautions in preparing its Bid:
- a. The bid shall be signed and, if necessary, shall be accompanied by a Power of Attorney.
  - b. Check to insure all blank spaces have been filled in with requested information and that the specified accompanying documents have been included in a sealed opaque envelope addressed as provided above.
  - c. Where the Bid Form provides for quoting a unit price, the bidder shall quote the unit price.
  - d. When applicable, make sure that the Bid Guaranty is properly executed and signed the bidder and the surety or sureties.

7. Bonds and Guarantees

- a. Bid Guaranty: Bidder shall furnish a Bid Guaranty, as prescribed in Section 153.54 of the Ohio Revised Code, in the form of either: (1) a bond for the full amount of the bid in the form of the Bid Guaranty and Contract Bond; or (2) a certified check, cashier's check, or irrevocable letter of credit in an amount equal to 10% of the bid amount made out to the Rocky River City Schools. Note that the bidder may leave the amount on the Bid Guaranty and Contract Bond form blank and it will be deemed to cover the amount of the bid.
- b. Contract Bond: The successful bidder who, as a Bid Guaranty, submits a certified check, cashier's check, or irrevocable letter of credit in an amount equal to 10% of the bid amount shall furnish a Contract Bond in the form

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### Rocky River City School District

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included in the Contract Documents in an amount equal to 100% of the Contract Sum.

- c. The bond must be issued by a surety company authorized by the Ohio Department of Insurance to transact business in the State of Ohio. The bond must be issued by a surety capable of demonstrating a record of competent underwriting, efficient management, adequate reserves, and sound investments. These criteria will be met if the surety currently has an A.M. Best Company Policyholders Rating of "A-" or better and has or exceeds the Best Financial Size Category of Class VI.
  - d. All bonds shall be signed by an authorized agent of an acceptable surety and by the bidder. (Affix Corporate Seals to all copies.)
  - e. Surety bonds shall be supported by credentials showing the power of attorney of the agent, and a certificate showing the legal right of the surety to do business in the State of Ohio, and a financial statement of the surety.
  - f. The Bid Guaranty, as applicable, shall be in the name of or payable to the order of the Owner.
  - g. The name and address of the surety and the name and address of the surety's agent should be typed or printed on each bond.
8. Bidder's Examination and Representation
- a. Before submitting a bid, each bidder should carefully examine the documents and the construction site and inform itself of the limitations and conditions related to the Work covered by the bid and shall include in its bid a sum to cover the cost of such items. Bidders awarded contracts will not be given extra payments for conditions that could have been determined by examining the site and documents.
  - b. It is the purpose and intent of the Contract Documents that a complete job be accomplished. It shall be each bidder's responsibility to include costs necessary to provide labor and materials for that portion of the Work bid upon, including incidentals, whether or not specifically called for in the Specifications.
9. Clarification of Bidders' Questions

## INSTRUCTIONS TO BIDDERS

### Rocky River City School District

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- a. Bid document clarifications and/or questions for this Project shall be directed to Adam Sywanyk, Supervisor of Facility Operations, (440) 356-6019, Sywanyk.Adam@rrcs.org. In order to expedite responses it is preferred that all questions and clarification requests may be sent to Mr. Sywanyk via email. Responses to questions will be provided via addendum to all registered document holders.
  - b. Each bidder is responsible for calling to the attention of Mr. Sywanyk any ambiguities, inconsistencies, errors, or omissions which occur in the Contract Documents. If the bidder fails to request clarification, the bidder will be expected to overcome such conditions without additions to the bid price.
  - c. Prospective bidders with questions as to the true meaning of any part of the Contract Documents shall submit questions to Mr. Sywanyk, not less than three (3) calendar days prior to the closing time for acceptance of bids, a written request for interpretation and clarification.
  - d. Bidders are instructed to request interpretations and the issuing of addenda if the Contract Documents call for materials, equipment, or methods that adversely affect the cost or quality of the Project or are unavailable.
10. Sealed bids will be received by the Office of the Treasurer, 1101 Morewood Parkway, Rocky River, Ohio 44116, until 1:00 pm on Monday, June 30, 2014 for this project. Sealed bids will be opened and publicly read in the Board of Education Room 1:00 pm on Monday, June 30, 2014. Failure to submit a bid by this deadline shall be a waiver of any right to submit same under these Instructions to Bidders. Bids not received by this deadline will not be opened or considered.

#### **J. METHOD OF AWARD**

1. Subject to the right of the Owner to reject any and all bids, the Owner will award a single contract for the Project.
2. Determination of Lowest Responsive and Responsible Bidder.

Subject to the right of the Owner to reject any or all bids, the Owner will award the contract for the Work to the bidder who is determined to be responsible and who submits the lowest responsive bid. The Rocky River City School District Board of Education, in its sole discretion, will determine whether a bid is responsive to the Bid

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Documents. The Rocky River City School District Board of Education, in its sole discretion, will determine whether the bidder is responsible. In determining whether a bid is responsive or bidder is responsible, these entities may consider the criteria contained in Rocky River City School District Board of Education Policy 6320 and Administrative Guideline 6320B, the following criteria set forth below, and such other criteria as it determines proper under the circumstances. The Owner, in its sole discretion, may waive any of such criteria for good cause shown.

a. The bidder's work history.

The bidder should have a record of consistent customer satisfaction and of consistent completion of projects, including projects which are comparable to or larger and more complex than the Owner's Project, on time and in accordance with the respective contract documents. If the bidder's management (*i.e.*, president, chairman of the board, or any director) operates or has operated another construction company, the Owner may consider the work history of that company in determining responsibility of the bidder.

The Owner will consider the bidder's prior experience on other projects of the Owner, including the bidder's demonstrated ability to complete its work on these projects in accordance with the Contract Documents and on time and its ability to work with the Owner.

The bidder authorizes the Owner and its representatives to contact the owners and design professionals on projects on which the bidder has worked, and authorizes and requests such owners and design professionals to provide the Owner with a candid evaluation of the bidder's performance. By submitting its bid, the bidder agrees that if it or any person at its urging, directly or indirectly, brings an action against any of such owners or design professionals or their employees as a result of or related to such candid evaluation and such action is not successful, the bidder will reimburse such owners, design professionals and/or their employees for all legal fees and expenses incurred by them that are related to such legal action, including the cost of collection. This obligation is expressly intended for the benefit of such owners, design professionals and their employees.

b. The bidder's resources, including but not limited to the financial ability to complete the contract successfully and on time without resort to its surety and the experience, adequacy, and numbers of the bidder's work force.

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- c. The bidder's compliance with federal, state, and local laws, rules, and regulations, including but not limited to the Occupational Safety and Health Act.
  - d. The foregoing information with respect to each of the subcontractors which the bidder intends to use on the Project.
  - e. The bidder's participation in a drug-free workplace program acceptable to the Owner and compliant with the requirements of the Ohio Bureau of Workers' Compensation (OBWC) Drug-Free Workplace Program (DFWP), including placement of its employees in a pool with random drug testing at a rate of at least 5%. All subcontractors shall also comply with these drug-free workplace program requirements. Prime Trade Contractors can verify DFWP enrollment for a subcontractor by visiting the OBWC's website at: [www.ohiobwc.com](http://www.ohiobwc.com). The "Drug Free Workplace Program Certification" form included in the Project manual shall be completed and shall be a prerequisite for contract execution.
  - f. The bidder's completed "Declaration Regarding Material Assistance/Non Assistance to Terrorist Organization" form, which is included in the Project Manual. This form must be filled out completely and shall be a prerequisite for contract execution.
  - g. The bidder's record for both resolved and unresolved findings for recovery as defined in Ohio Revised Code Section 7.24.
3. Within three (3) calendar days after receipt of the bids, the apparent low bidder will complete and submit to Mr. Sywanyk the following:
- a. A comprehensive listing of all ongoing and completed public and private construction projects, of a similar nature, in the last three (3) years; including the nature and value of each contract and a name/address/telephone number and contact person.
  - b. The list of all proposed subcontractors, suppliers, and manufacturers for the Project. After approval of the list of proposed subcontractors, suppliers, and manufacturers submitted by the successful bidder, the list shall not be changed unless written approval of the change is authorized by the Owner.
  - d. Current Worker's Compensation Certificate.
  - e. Affidavit as to Property Taxes.



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- f. Complete listing of any EPA, OSHA, or other regulating entity issues or citations received in the last ten (10) years.
  - g. To support a Bond, a current and signed Certificate of Compliance required under O.R.C. 9.311, issued by the Department of Insurance, showing the Surety is licensed to do business in the State of Ohio.
  - h. Description of the management experience of the bidder's project manager(s) and superintendent(s) that will be working on the Project.
  - i. Completed "Drug Free Workplace Program Certification" form.
  - j. Completed "Declaration Regarding Material Assistance/Non Assistance to Terrorist Organization" form.
4. The failure to submit requested information on a timely basis may result in the determination that the bidder is not responsible.
  5. By submitting its bid, the bidder agrees that the Owner's determination of responsibility shall be final and conclusive, and that if the bidder, or any person at the bidder's urging, directly or indirectly challenges such determination in any legal proceeding, and such challenge is not successful, the bidder will reimburse the Owner for all legal fees and expenses incurred by the Owner that are related to such challenge, including the cost of collection.
  6. No bidder may withdraw its bid within thirty (30) days after the date bids are opened.
  7. The Owner reserves the right to disqualify bids, before or after opening, upon evidence of collusion with intent to defraud or other illegal practices on the part of the bidder.

#### **K. REJECTION OF BID**

If the lowest bidder is not responsive and/or responsible, the Owner shall reject such bid and shall notify the bidder in writing of the finding and provide a summary of the reasons for the finding. The Owner, through its representatives, may meet with the bidder to review the basis for the finding. See Rocky River City School District Board of Education Policy 6320 and Administrative Guideline 6320B.

#### **L. EXECUTION OF AGREEMENT**

The successful bidder will be notified of the award of the contract and provided with the Owner-Contractor Agreement ("Agreement") in the form and substance included in the Contract Documents.

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The successful bidder will sign and return the original forms to the Owner, or as otherwise directed, for execution by the Owner. The successful bidder will be provided with a fully executed copy of the Agreement for its records. If the successful bidder does not return the executed Agreements to the Owner within five (5) business days of its receipt of the Agreements from the Owner, the Owner reserves the right to reject the bid and award the contract to the next low responsive and responsible bidder.

**M. SUBSTITUTIONS**

Certain brands of material or apparatus may be specified. Each bid will be based on these brands, which may be referred to in the Contract Documents as Standards. The use of another brand is not permitted.

**N. ADDENDA**

1. Any explanation, interpretation, correction or modification of the Bid Documents will be issued in writing in the form of an addendum, which shall be the only means considered binding; explanations, interpretations, etc., made by any other means shall NOT be legally binding. All addenda shall become a part of the Contract Documents.
2. All addenda will be issued except as hereafter provided, and mailed or otherwise furnished to persons who have obtained Contract Documents for the Project.
3. Copies of each addendum will be sent only to the contractors to whom the Contract Documents have been issued. Receipt of addenda shall be indicated by bidders in the space provided on the Bid Form.
4. Each bidder shall carefully read and review the Contract Documents and immediately bring to the attention of Mr. Sywanyk any error, omission, inconsistency, or ambiguity therein.
5. If a bidder fails to indicate receipt of all addenda through the last addenda issued on its Bid Form, the bid of such bidder will be deemed to be responsive only if:
  - a. The bid received clearly indicates that the bidder received the addendum, such as where the addendum added another item to be bid upon and the bidder submitted a bid on that item; or

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- b. The addendum involves only a matter of form or is one which has either no effect or has merely a trivial or negligible effect on price, quantity, quality, or delivery of the item bid upon.

**O. STATE SALES AND USE TAXES**

The Owner is a political subdivision of the State of Ohio. Building materials that the successful bidder purchases for incorporation into the Project will be exempt from state sales and use taxes if the successful bidder provides a properly completed sales tax exemption certificate, executed by the successful bidder and the Owner, to the vendors or suppliers when the materials are acquired. The Owner will execute properly completed certificates on request.

**P. LIQUIDATED DAMAGES**

By submitting the Bid, the bidder agrees that the periods for performing the Work are reasonable and that the bidder's Work can be completed consistent with the milestone dates for its Work included in the Contract Documents and complete by its applicable Completion Date(s). If the successful bidder does not have its Work on the Project complete by any of the milestone dates for its Work included in the Contract Documents, the successful bidder will pay the Owner (and the Owner may set off from sums coming due the successful bidder) liquidated damages in the per diem amount set forth in the Owner-Contractor Agreement for each calendar day beyond the milestone date or Completion Date, as applicable and as extended in accordance with the Contract Documents. The bidder acknowledges by submitting its bid and entering into a contract with the Owner that such amounts of liquidated damages represent a reasonable estimate of the actual damages that the Owner would incur if the Work is not complete by any of the milestone dates or substantially complete by its Completion Date, as applicable. These liquidated damages are damages for loss of use of the Project, and the successful bidder in addition to the liquidated damages will be obligated to indemnify and hold the Owner harmless from any claims, and if the Work on the Project is accelerated because of delay, for all costs related to the acceleration of the Work, as provided in the Contract Documents.

**Q. BID RESPONSIVENESS; OWNER'S RIGHT TO WAIVE DEFECTS AND IRREGULARITIES**

The bidder's bid shall be responsive to the Specifications for the Project in all respects and shall contain no irregularities or deviations from the Specifications that would affect the amount of the bid or otherwise give the bidder a competitive advantage. The Owner reserves the right to waive any and all irregularities provided that the defects and irregularities do not affect the amount of the bid in any material respect or otherwise give the bidder a competitive advantage. By submitting its bid, the bidder agrees that (i) the Owner's determination of whether a defect or irregularity affects the amount of the bid in any material respect or otherwise gives the bidder a competitive advantage will be final

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and conclusive; and (ii) the bidder will pay the Owner's attorneys' and consultants' fees related to any challenge to the bid procedure or process, brought directly or indirectly by the bidder and/or any of its affiliates, which is unsuccessful.

#### **R. MODIFICATION/WITHDRAWAL OF BIDS**

1. A bidder may modify its bid by written communication to the Owner addressed to the Owner, attention of the Treasurer, at the Owner's address at any time prior to the scheduled closing time for receipt of bids, provided such written communication is received by the Treasurer prior to the bid deadline. The written communication shall not reveal the bid price, but should provide the addition or subtraction or other modification so that the final prices or terms will not be known until the sealed bid is opened. If the bidder's written instructions with the change in bid reveal the bid amount in any way prior to the bid opening, the bid may be rejected as non-responsive.
2. A bidder may withdraw its bid at any time for any reason prior to the bid deadline established in the Notice to Bidders. The request to withdraw shall be made in writing and submitted to the Owner, attention of the Treasurer, at the Owner's address. The request for withdrawal must be received by the Treasurer prior to the time of the bid opening. All bids shall remain valid and open for acceptance for a period of at least 30 days after the bid opening; provided, however, that a bidder may withdraw its bid from consideration after the bid deadline when all of the following apply: i) the price bid was substantially lower than the other bids; ii) the reason for the bid being substantially lower was a clerical mistake, rather than a mistake in judgment, and was due to an unintentional and substantial error in arithmetic or an unintentional omission of a substantial quantity of work, labor, or material; iii) the bid was submitted in good faith; iv) the bidder provides written notice to the Owner, to the attention of the Treasurer, within two (2) business days after the bid opening for which the right to withdraw is claimed. No bid may be withdrawn under this provision if the result would be the awarding of the contract on another bid for the bid package from which the bidder is withdrawing its bid to the same bidder. If a bid is withdrawn under this provision, the Owner may award the Contract to another bidder determined by the Owner to be the lowest responsible bidder or the Owner may reject all bids and advertise for other bids. In the event the Owner advertises for other bids, the withdrawing bidder shall pay the costs incurred in connection with the rebidding by the Owner, including the cost of printing new Contract Documents, required advertising, and printing and mailing notices to prospective bidders, if the Owner finds that such costs would not have been incurred but for such withdrawal. A bidder may withdraw its bid at any time after the 30-day period described in this provision by written notice to the Treasurer.

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**S. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION**

Minority, female, and disadvantaged businesses will be afforded full opportunity to submit bids, and bidders will not be discriminated against on the grounds of race, color, religion, sex, age, handicap, ancestry, or national origin in the consideration of an award. The successful bidder(s) shall follow the EEO/nondiscrimination requirements, as applicable to the Project, that are contained in the Owner-Contractor Agreement.

**BID FORM**

1.01 BID SUBMITTED BY: \_\_\_\_\_  
(Name of Bidding Contractor)

1.02 DATE OF BID: \_\_\_\_\_

1.03 PLEASE DELIVER BID TO:

Treasurer – Rocky River City School District Board of Education  
1101 Morewood Parkway  
Rocky River, Ohio 44116  
Attention: Greg Markus

1.04 Having viewed the Bid Documents and Contract Documents regarding the Project entitled “**Restroom Partition Removal and Replacement and Related Work at Rocky River High School**” for the Board of Education of the ROCKY RIVER CITY SCHOOL DISTRICT Cuyahoga County, Rocky River, Ohio (“Board” or “owner”) and having also received, read and taken into account the following Addenda:

Addendum No. \_\_\_\_\_, dated \_\_\_\_\_

Addendum No. \_\_\_\_\_, dated \_\_\_\_\_

and likewise having attended the mandatory walk-through/site visit and inspected the site and the conditions affecting and governing the Project and confirmed the location of the site utilities and all existing structures, the undersigned Contractor hereby proposes to furnish all materials and to perform all labor necessary to complete the Project on time for which this bid is submitted in accordance with the Bid Documents and Contract Documents as set forth in Section 2.01 below.

2.01 Contractor’s bid for all labor and materials for the Project: \$\_\_\_\_\_

Please state the amount of the bid in words:

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3.01 The Contractor acknowledges and agrees that the Contract Documents are sufficient and adequate for it to perform the Work specified. The Contractor agrees to comply with all requirements of the Contract Documents, regardless of whether the Contractor has actual knowledge of the requirements and regardless of any statement or omission made by the Contractor in the preparation of its bid which might indicate a contrary intention. The Contractor acknowledges that all Work shall be completed within the time established in the Contract Documents.

4.01 Full legal name of the bidding contractor: \_\_\_\_\_

4.02 Identify whether the bidding contractor is a sole proprietorship, partnership, limited liability company or corporation: \_\_\_\_\_

4.03 Address of the bidding contractor: \_\_\_\_\_

4.04 Telephone/Facsimile numbers of the bidding contractor: \_\_\_\_\_

4.05 Federal Tax Identification Number: \_\_\_\_\_

4.06 Identify the name of the individual authorized to bind the bidding contractor (include all contact information including email address: \_\_\_\_\_

\_\_\_\_\_

5.01 Signature of authorized representative of bidding contractor:

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

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

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

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

**BID GUARANTY AND CONTRACT BOND**  
(O.R.C. § 153.571)

"KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned . . . . . as principal and . . . . . as sureties, are hereby held and firmly bound unto . . . . . as obligee in the penal sum of the dollar amount of the bid submitted by the principal to the obligee on . . . . . to undertake the project known as . . . . . The penal sum referred to herein shall be the dollar amount of the principal's bid to the obligee, incorporating any additive or deductive alternate bids made by the principal on the date referred to above to the obligee, which are accepted by the obligee. In no case shall the penal sum exceed the amount of . . . . dollars. (If the foregoing blank is not filled in, the penal sum will be the full amount of the principal's bid, including alternates. Alternatively, if the blank is filled in, the amount stated must not be less than the full amount of the bid including alternates, in dollars and cents. A percentage is not acceptable.) For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this . . . . day of . . . . ., . . . . THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal has submitted a bid for . . . . .

Now, therefore, if the obligee accepts the bid of the principal and the principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material; and in the event the principal pays to the obligee the difference not to exceed ten per cent of the penalty hereof between the amount specified in the bid and such larger amount for which the obligee may in good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event the obligee does not award the contract to the next lowest bidder and resubmits the project for bidding, the principal pays to the obligee the difference not to exceed ten per cent of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect; if the obligee accepts the bid of the principal and the principal within ten days after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which said contract is made a part of this bond the same as though set forth herein;

Now also, if the said . . . . . shall well and faithfully do and perform the things agreed by . . . . . to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materials suppliers, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materials suppliers or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or



to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on its bond."

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Contractor:

---

Surety:

---

Name of Surety's Agent:

---

**CONTRACT BOND**  
(O.R.C. § 153.571)

"KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned .....  
as principal and ..... as sureties, are hereby held and firmly bound unto ..... in  
the penal sum of ..... dollars, for the payment of which well and truly to be made, we hereby  
jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this ..... day of ....., ....

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named  
principal did on the ..... day of ....., ....., enter into a contract with .....,  
which said contract is made a part of this bond the same as though set forth herein;

Now, if the said ..... shall well and faithfully do and perform the things agreed by  
..... to be done and performed according to the terms of said contract; and shall pay all  
lawful claims of subcontractors, material suppliers, and laborers, for labor performed and  
materials furnished in the carrying forward, performing, or completing of said contract; we  
agreeing and assenting that this undertaking shall be for the benefit of any material supplier or  
laborer having a just claim, as well as for the obligee herein; then this obligation shall be void;  
otherwise the same shall remain in full force and effect; it being expressly understood and agreed  
that the liability of the surety for any and all claims hereunder shall in no event exceed the penal  
amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or  
to the terms of the said contract or in or to the plans or specifications therefor shall in any wise  
affect the obligations of said surety on its bond."

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Contractor:  
\_\_\_\_\_

Surety:  
\_\_\_\_\_

Name of Surety's Agent:  
\_\_\_\_\_

**NONCOLLUSION AFFIDAVIT**

No bid will be accepted that does not have this form completely executed.

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, under penalty of perjury, that to the best of his/her/its knowledge and belief:

(a) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other bidder or any competitor;

(b) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;

(c) No attempt has been made or will be made by the bidder to insure any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition;

(d) The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under penalties of perjury, affirms the truth thereof, such penalties being applicable to the bidder as well as to the person signing in its behalf.

(e) That attached hereto (if corporate bidder) is a certified copy of resolution authorizing the execution of this certificate by the signature of this bid or proposal on behalf of the corporation bidder.

\_\_\_\_\_  
(Individual)

\_\_\_\_\_  
(Corporation)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Notary Public: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**STATEMENT OF LEGAL COMPLIANCE**

(a) The Contractor hereby states that it shall not, by reason of race, creed, sex, disability, or color, discriminate against any citizen of the State of Ohio in the employment of workers who are qualified and available to perform the Work, or any portion thereof, to which the employment relates. The Contractor further states that it is in compliance with all applicable federal, state and local laws, rules and regulations governing fair labor and employment practices and all equal employment opportunity requirements, including O.R.C. Section 153.59.

(b) The Contractor represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and states that it is in compliance with such requirements.

(c) The Contractor shall make a good faith effort to ensure that no employee of the Contractor will purchase, transfer, use or possess or be under the influence of alcohol or illegal drugs or abuse legally obtained drugs while on or about the Projects. Except for the term "employee," terms in this paragraph are used as defined in Rule 123:1-76 of the Ohio Administrative Code.

(d) The Contractor shall declare that it does not provide material assistance to any organization that is on the U.S. Department of State Terrorism Exclusion List.

(e) The Contractor represents that it is not subject to a finding for recovery under O.R.C. Section 9.24 or that the Contractor has taken appropriate remedial steps required under O.R.C. Section 9.24 or otherwise qualifies under this section.

(f) The Owner shall have the right to examine all books, records, documents and other data related to the Project. The aforementioned materials shall be made available at the Contractor's office, at all reasonable times, for inspection, audit and reproduction until the expiration of six (6) years after the date of acceptance of the Project by the Owner.

(g) The Contractor will comply with the legal requirements of O.R.C. Section 153.03 for a drug-free workplace program.

**Contractor**

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

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

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

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

# DRAFT AIA<sup>®</sup> Document A107<sup>™</sup> - 2007

## Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope

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.

**ELECTRONIC COPYING** of any portion of this AIA<sup>®</sup> Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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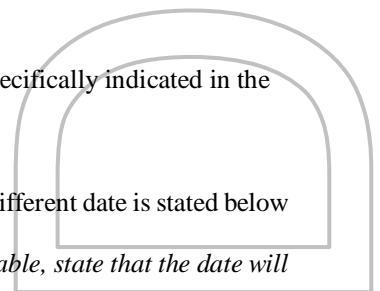
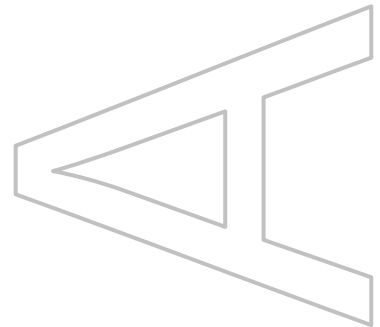
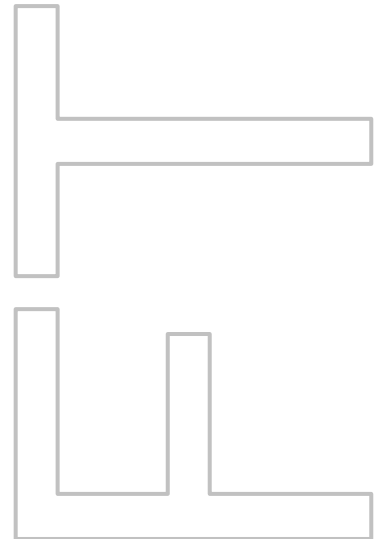
### ARTICLE 1 THE WORK OF THIS CONTRACT

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

### ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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



<< >>

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

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

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

<< >>

Portion of Work

Substantial Completion Date

<< >>

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

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

<< >>

### ARTICLE 3 CONTRACT SUM

§ 3.1 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 one of the following:

*(Check the appropriate box.)*

[ << >> ] Stipulated Sum, in accordance with Section 3.2 below

[ << >> ] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

[ << >> ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

*(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)*

§ 3.2 The Stipulated Sum shall be << >> (\$ << >> ), subject to additions and deductions as provided in the Contract Documents.

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

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

<< >>

§ 3.2.2 Unit prices, if any:

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

Item

Units and Limitations

Price Per Unit (\$0.00)

<< >>

§ 3.2.3 Allowances included in the stipulated sum, if any:

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

Item

Allowance

<< >>

§ 3.3 COST OF THE WORK PLUS CONTRACTOR'S FEE

§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

<< >>

§ 3.4 COST OF THE WORK PLUS CONTRACTOR'S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

<< >>

§ 3.4.3 GUARANTEED MAXIMUM PRICE

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed <> (\$ <> ), subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. (Insert specific provisions if the Contractor is to participate in any savings.)

<< >>

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

<< >>

§ 3.4.3.3 Unit Prices, if any:

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

Item	Units and Limitations	Price Per Unit (\$0.00)
<< >>		

§ 3.4.3.4 Allowances included in the Guaranteed Maximum Price, if any:

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

Item	Allowance
<< >>	

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

<< >>

ARTICLE 4 PAYMENTS

§ 4.1 PROGRESS PAYMENTS

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

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

<< >>



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

§ 4.1.4 Retainage, if any, shall be withheld as follows:

«»

§ 4.1.5 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.)*

«» % «»

## § 4.2 FINAL PAYMENT

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

- 1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- 2 the contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a guaranteed maximum price; and
- 3 a final Certificate for Payment has been issued by the Architect-Owner.

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

«»

## ARTICLE 5 DISPUTE RESOLUTION

### § 5.1 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by, mediation pursuant to Section 21.3, the method of binding dispute resolution shall be as follows:

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

[  ] Arbitration pursuant to Section 21.4 of this Agreement

[  ] Litigation in a court of competent jurisdiction

[  ] Other (Specify)

«»

## ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

§ 6.1.2 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
<< >>			

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

<< >>

Section	Title	Date	Pages
<< >>			

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

<< >>

Number	Title	Date
<< >>		

§ 6.1.5 The Addenda, if any:

Number	Date	Pages
<< >>		

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are enumerated in this Article 6.

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

- .1 Exhibit A, Determination of the Cost of the Work, if applicable.
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

<< >>

- .3 Other documents:  
*(List here any additional documents that are intended to form part of the Contract Documents.)*

<< >>

## ARTICLE 7 GENERAL PROVISIONS

### § 7.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. 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-Owner](#). 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

### § 7.2 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 between any persons or entities other than the Owner and the Contractor.

### § 7.3 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.

### § 7.4 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 Owner and the Owner'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.

### § 7.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 7.5.1 The ~~Architect and the Architect's Owner and the Owner'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 Owner's or Owner's~~ consultants' reserved rights.

§ 7.5.2 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 Owner.~~

### § 7.6 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 transmission, unless otherwise provided in the Agreement or in the Contract Documents.

## ARTICLE 8 OWNER

### § 8.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 8.1.1 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.2 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.

§ 8.1.3 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

### § 8.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the 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 is 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.

### § 8.3 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, without prejudice to any other remedy the Owner may have, may correct such deficiencies and may deduct the reasonable cost thereof, including Owner's expenses ~~and compensation for the Architect's services~~ made necessary thereby, from the payment then or thereafter due the Contractor.

## ARTICLE 9 CONTRACTOR

### § 9.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 9.1.1 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.

§ 9.1.2 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 8.1.1, 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~~ Owner any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the ~~Architect~~ Owner 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.

§ 9.1.3 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~~ Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the ~~Architect~~ Owner may require.

### § 9.2 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 9.2.1 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.

§ 9.2.2 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.

### § 9.3 LABOR AND MATERIALS

§ 9.3.1 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.

§ 9.3.2 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 skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the ~~Owner, after evaluation by the Architect and Owner~~ and Owner and in accordance with a Modification.

### § 9.4 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 under normal usage.

### § 9.5 TAXES

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

## § 9.6 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as 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.

§ 9.6.2 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. 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.

## § 9.7 ALLOWANCES

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Allowance amounts shall not include the Contractor's costs for unloading and handling at the site, labor, installation, overhead, and profit.

## § 9.8 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the ~~Owner's and Architect's information~~ Owner'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.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the ~~Owner and Architect~~ Owner.

## § 9.9 SUBMITTALS

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the ~~Architect-Owner~~ Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect-Owner reasonable time for review. 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. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

## § 9.10 USE OF SITE

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

## § 9.11 CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

## § 9.12 CLEANING UP

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 material from and about the Project.

### § 9.13 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.~~ Owner.

### § 9.14 ACCESS TO WORK

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

### § 9.15 INDEMNIFICATION

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the ~~Owner, Architect, Architect's consultants and Owner and its~~ agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 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 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## ARTICLE 10 — ARCHITECT

~~§ 10.1 The Architect will provide administration of the Contract 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, unless otherwise modified in writing in accordance with other provisions of the Contract.~~

~~§ 10.2 The Architect will visit the site at intervals appropriate to the stage of the construction 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 safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.~~

~~§ 10.3 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.~~

~~§ 10.4 Based on the Architect's evaluations of the Work and 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.~~

~~§ 10.5 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.~~

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~~§ 10.6 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.~~

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~~§ 10.7 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 will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.~~

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~~§ 10.8 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~

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~~§ 10.9 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.~~

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## ARTICLE 11 SUBCONTRACTORS

§ 11.1 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.

§ 11.2 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 the Subcontractors or suppliers for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner ~~or Architect~~ has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the 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 the Contract Documents, assumes toward the ~~Owner and Architect, Owner~~, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

## ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 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 21.

§ 12.2 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 activities with theirs as required by the Contract Documents.

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

## ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, ~~Contractor and Architect~~, Contractor, or by written Construction Change Directive signed by the ~~Owner and Architect~~, Owner.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the ~~Owner and Architect~~, Owner, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The ~~Architect~~, Owner will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the ~~Architect~~, Owner will prepare a Change Order.

§ 13.3 The ~~Architect~~, Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner ~~and Architect~~ promptly and before conditions are disturbed.

## ARTICLE 14 TIME

§ 14.1 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.

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

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

§ 14.4 The date of Substantial Completion is the date certified by the ~~Architect~~, Owner in accordance with Section 15.4.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the ~~Architect~~, Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the ~~Architect~~, Owner may determine, subject to the provisions of Article 21.

## ARTICLE 15 PAYMENTS AND COMPLETION

### § 15.1 APPLICATIONS FOR PAYMENT

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit to the ~~Architect~~, Owner, before the first Application for Payment, a schedule of values, allocating the entire Contract Sum to the various portions of the Work, 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,~~ Owner may require. This schedule shall be used in reviewing the Contractor's Applications for Payment.

§ 15.1.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress



payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 15.1.3 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 stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.1.4 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 other encumbrances adverse to the Owner's interests.

## § 15.2 CERTIFICATES FOR PAYMENT

§ 15.2.1 The ~~Architect-Owner~~ 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 a~~ Certificate for Payment for such amount as the Owner determines is properly due, or notify the ~~Contractor and Owner in writing of the Architect's Contractor in writing of the Owner's~~ reasons for withholding certification in whole or in part as provided in Section 15.2.3.

§ 15.2.2 The issuance of a Certificate for Payment will constitute a representation by ~~the Architect to~~ the Owner, based on the ~~Architect's~~ evaluations 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-Owner~~. 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-Owner~~ 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.

§ 15.2.3 The ~~Architect-Owner~~ 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 Owner's interests, if in its~~ opinion the representations to the Owner required by Section 15.2.2 cannot be made. If the ~~Architect-Owner~~ is unable to certify payment in the amount of the Application, the ~~Architect will notify the Contractor and Owner as provided in Section 15.2.1. If the Contractor and the Architect-Owner will notify the Contractor. If the Contractor and the Owner~~ cannot agree on a revised amount, the ~~Architect-Owner~~ will promptly issue a Certificate for Payment for the amount for which the ~~Architect-Owner~~ is able to make such ~~representations to the Owner. The Architect representations. The Owner~~ 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 its opinion to protect itself~~ from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, 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.

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

## § 15.3 PROGRESS PAYMENTS

§ 15.3.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment, 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 similar manner.

§ 15.3.2 ~~Neither the Owner nor Architect shall~~ The Owner shall not have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 15.3.3 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.

## § 15.4 SUBSTANTIAL COMPLETION

§ 15.4.1 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.

§ 15.4.2 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-Owner~~ a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.4.3 Upon receipt of the Contractor's list, the ~~Architect-Owner~~ will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the ~~Architect-Owner~~ determines that the Work or designated portion thereof is substantially complete, the ~~Architect-Owner~~ will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and 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.

§ 15.4.4 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.

## § 15.5 FINAL COMPLETION AND FINAL PAYMENT

§ 15.5.1 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-Owner~~ will promptly make such inspection and, when the ~~Architect-Owner~~ finds the Work acceptable under the Contract Documents and the Contract fully performed, the ~~Architect-Owner~~ will promptly issue a final Certificate for Payment stating that to the best of the ~~Architect's-Owner's~~ knowledge, information and belief, and on the basis of the ~~Architect's-Owner'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-Owner's~~ final Certificate for Payment will constitute a further representation that conditions stated in Section 15.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.5.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or 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 costs and reasonable attorneys' fees.

§ 15.5.3 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.

§ 15.5.4 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 16 PROTECTION OF PERSONS AND PROPERTY

### § 16.1 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. 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.

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 and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property 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 16.1.2 and 16.1.3, except for damage or loss attributable to acts or omissions of the Owner ~~or Architect~~ 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 9.15.

### § 16.2 HAZARDOUS MATERIALS

§ 16.2.1 The Contractor is responsible for compliance with the requirements of 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. 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 shutdown, delay and start-up.

§ 16.2.2 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 16.2.1 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.

§ 16.2.3 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.

## ARTICLE 17 INSURANCE AND BONDS

§ 17.1 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, insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not

less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations under Section 9.15. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. 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 as an additional insured~~ 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.

#### § 17.2 OWNER'S LIABILITY INSURANCE

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

#### § 17.3 PROPERTY INSURANCE

§ 17.3.1 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 on an "all-risk" or equivalent policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and 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 15.5 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 17.3.1 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Project.

§ 17.3.2 The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. 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.

§ 17.3.3 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 12, if any, and any of their subcontractors, sub-subcontractors, agents and employees~~ other for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section 17.3 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 12, 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.

§ 17.3.4 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. 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.

#### § 17.4 PERFORMANCE BOND AND PAYMENT BOND

§ 17.4.1 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.

§ 17.4.2 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 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the [Architect-Owner](#) 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 additional](#) services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.2.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, 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 15.4.3, 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.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 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.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

## ARTICLE 19 MISCELLANEOUS PROVISIONS

### § 19.1 ASSIGNMENT OF CONTRACT

Neither party to the Contract shall assign the Contract without written consent of the other, except that 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.

### § 19.2 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 21.4.

### § 19.3 TESTS AND INSPECTIONS

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities shall be made at an appropriate time. 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-Owner](#) timely notice of when and where tests and inspections are to be made so that the [Architect-Owner](#) 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 the costs to the Contractor.

### § 19.4 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

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 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 19.4.

## ARTICLE 20 TERMINATION OF THE CONTRACT

### § 20.1 TERMINATION BY THE CONTRACTOR

If the Architect-Owner fails to certify payment as provided in Section 15.2.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and the Architect-Owner, 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.

### § 20.2 TERMINATION BY THE OWNER FOR CAUSE

§ 20.2.1 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.

§ 20.2.2 When any of the above reasons exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' written notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's-Owner'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 Architect-Owner, upon application, and this obligation for payment shall survive termination of the Contract.

### § 20.3 TERMINATION BY THE OWNER FOR CONVENIENCE

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. 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 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect-Owner but excluding those arising under Section 16.2, shall be referred initially to the Architect-Owner for decision. Such matters, except those waived as provided for in Section 21.8 and Sections 15.5.3 and 15.5.4, shall, after initial decision by the Architect-Owner or 30 days after submission of the matter to the Architect-Owner, be subject to mediation as a condition precedent to binding dispute resolution.

§ 21.2 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.3 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their 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 this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution 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, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.4 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 the Construction Industry Arbitration Rules in effect on the date of this Agreement. 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 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.

§ 21.5 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).

§ 21.6 Any party to an arbitration 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 a Claim not described in the written Consent.

§ 21.7 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.

#### § 21.8 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 20. Nothing contained in this Section 21.8 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements 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)*

## **SPECIAL CONDITIONS OF THE CONTRACT OF CONSTRUCTION**

### **Rocky River City School District Board of Education**

The contents of these Special Conditions amend and supersede any provisions on the Insurance, Waiver of Subrogation, Bonds and Indemnification contained in the AIA A107 – 2007 Contractor-Owner Agreement.

### **INSURANCE, WAIVER OF SUBROGATION, BONDS & INDEMNIFICATION**

#### **A. CONTRACTOR INSURANCE**

For any Work under these Contract Documents, and until Final Completion of the entire Work, the Contractor, shall purchase and maintain at their own expense, or cause to be purchased and maintained, throughout the term of these Contract Documents, the following insurance as specified below. All insurance required hereunder shall apply to and cover all loss or liability caused by, arising from, or resulting from the Work performed or required to be performed, provided or required to be provided, hereunder, it being understood and agreed that the Work may include hazardous and ultra-hazardous activities.

1. Commercial General Liability Insurance: on an occurrence coverage basis (including without limitation, bodily injury, personal injury and advertising injury, property damage, and broad-form contractual liability arising from or relating to these Contract Documents, coverage as respects independent contractors, operating mobile equipment, products and completed operations, explosion, collapse and underground hazards) of not less than the following amounts:

- a) Contractor:       \$1,000,000 Bodily Injury and Property Damage Limit for each occurrence  
                          \$1,000,000 Products/Completed Operations Annual Aggregate  
                          \$1,000,000 Personal and Advertising Injury  
                          \$1,000,000 General Annual Aggregate
  
- b) Subcontractor:   \$500,000 Bodily Injury and Property Damage Limit for each occurrence  
                          \$1,000,000 Products/Completed Operations Annual Aggregate  
                          \$500,000 Personal and Advertising Injury  
                          \$1,000,000 General Annual Aggregate
  
- c) Sub-subcontractor: \$500,000 Bodily Injury and Property Damage Limit for each occurrence  
  \$1,000,000 Products/Completed Operations Annual Aggregate  
  \$500,000 Personal and Advertising Injury  
  \$1,000,000 General Annual Aggregate

Commercial General Liability, Umbrella/Excess limits of liability (including Products/Completed Operations coverage) shall apply on a per-Project basis. The Commercial General Liability insurance limit and Auto Liability Insurance limit requirements may be



satisfied by the purchase and maintenance of any combination of primary, excess and/or umbrella insurance.

2. Auto Liability Insurance: Owned, Non-owned and Hired Automobile Liability coverage minimum annual combined single limit, bodily injury and property damage not less than:

- a) Contractor: \$2,000,000
- b) Subcontractor: \$1,000,000
- c) Sub-subcontractor: \$1,000,000

Such insurance shall cover and include liability arising from all vehicles owned by, hired by, or used by or on behalf of the Contractor. The coverage must be endorsed with ISO Form CA 99 48, or a substitute form providing equivalent coverage, to include without limitation, coverage respecting liability arising out of the transporting, loading or unloading of Hazardous Materials/Regulated Substances.

3. Workers' Compensation: with statutory limits. Employers Liability with an annual limit of not less than:

- a) Contractor: \$1,000,000 bodily injury by accident, each accident,  
\$1,000,000 bodily injury by disease, each employee, and  
\$1,000,000 bodily injury by disease, policy aggregate minimum coverage
- b) Subcontractor: \$500,000 bodily injury by accident, each accident,  
\$500,000 bodily injury by disease, each employee, and  
\$500,000 bodily injury by disease, policy aggregate minimum coverage
- b) Sub-subcontractor: \$500,000 bodily injury by accident, each accident,  
\$500,000 bodily injury by disease, each employee, and  
\$500,000 bodily injury by disease, policy aggregate minimum  
coverage

Coverage shall include defense of an allegation against the employer for injury believed to have been substantially certain to occur. The Employers Liability insurance requirement may be satisfied by including such coverage within the General Liability policy.

4. Contractors Pollution Liability: *If Work performed or provided by Contractor includes activities that could result in or give rise to a contamination or pollution incident, then Contractor shall purchase and maintain in force insurance covering loss and liability arising out of or relating to Work. Insurance shall cover and include claims alleging bodily injury, property damage, or clean up which shall include investigation, response, removal, remediation and neutralization of the pollution condition both on and off site claims or to any other location to which Hazardous Materials/Regulated Substances were transported from the Work site with limits not less than:*

- a) Contractor: \$1,000,000 Bodily Injury and Property Damage, Third-Party Claims, each occurrence  
\$2,000,000 Bodily Injury and Property Damage, Third-Party

Claims, annual aggregate  
 \$1,000,000 Clean-up, Response, and Remediation On-Site, each occurrence  
 \$1,000,000 Clean-up, Response, and Remediation Off-Site, each occurrence

b) Subcontractor: \$500,000 Bodily Injury and Property Damage, Third-Party Claims, each occurrence  
 \$1,000,000 Bodily Injury and Property Damage, Third-Party Claims, annual aggregate  
 \$500,000 Clean-up, Response, and Remediation On-Site, each occurrence  
 \$500,000 Clean-up, Response, and Remediation Off-Site, each occurrence

c) Sub-subcontractor: \$500,000 Bodily Injury and Property Damage, Third-Party Claims, each occurrence  
 \$1,000,000 Bodily Injury and Property Damage, Third-Party Claims, annual aggregate  
 \$500,000 Clean-up, Response, and Remediation On-Site, each occurrence  
 \$500,000 Clean-up, Response, and Remediation Off-Site, each occurrence

Contractor's Pollution Liability insurance may be written on a claims-made basis provided such policy shall either (i) be renewed annually for a period of not fewer than thirty-six months following completion with substantially the same terms and conditions or (ii) include an extended reporting period endorsement or clause providing not less than thirty-six months within which a claim may be made under the policy respecting Contractor's performance of Work; the cost for such thirty-six month period shall be borne exclusively by Contractor; provided further that if such insurance is written on a claims-made basis then the per occurrence limits stated above shall apply per incident; limits of liability shall apply on a per-Project basis.

5. Professional Liability Insurance: If Work performed or provided by Contractor includes activities that could result in or give rise to a Professional Liability claim or loss, then Contractor shall purchase and maintain in force Professional Liability insurance (including contractual liability coverage) covering liability and damages arising out of or resulting from Contractor's professional services rendered, or which should have been rendered, pursuant to these Contract Documents. Contractor shall purchase and maintain Professional Liability insurance coverage with limits of liability of not less than:

a) Contractor: \$1,000,000 Annual Aggregate  
 \$1,000,000 Per Claim

b) Subcontractor: \$1,000,000 Annual Aggregate  
 \$1,000,000 Per Claim

c) Sub-subcontractor: \$1,000,000 Annual Aggregate

\$1,000,000 Per Claim

Professional Liability insurance may be written on a claims-made basis provided such policy shall either (i) be renewed annually for a period of not fewer than thirty-six months following Final Completion with substantially the same terms and conditions or (ii) include an extended reporting period endorsement or clause providing not less than thirty-six months within which a claim may be made under the policy respecting the Contractor's performance of Work; the cost of coverage for such thirty-six month period shall be borne exclusively by the Contractor, provided further that if such insurance is written on a claims-made basis then the per occurrence limits stated above shall apply per incident; and if commercially feasible, limits of liability shall apply on a per-project basis with a designated limit applying to the Project Site.

6. Riggers Liability: *If Work performed or provided by Contractor includes activities that could include the use or operation of a crane or any other device or piece of equipment by which materials or equipment are rigged, hoisted, lowered, elevated, raised, or the movement of property, materials or equipment, loaded or unloaded, then Contractor shall purchase and maintain in force insurance, covering damage or loss to such property or equipment, with a limit of liability of not less than One Hundred Thousand Dollars (\$100,000.00) property damage each occurrence, general policy limit; such coverage shall include a limit for liability arising from any consequential or indirect losses including without limitation, any delay or loss of use claim.*

## **B. SUBCONTRACTOR INSURANCE**

All insurance requirements applicable to the Contractor shall also apply to subcontractors and sub-subcontractors. Contractor shall not sublet or subcontract any part of these Contract Documents without assuming responsibility for requiring each of its Subcontractor(s) (and each sub-Subcontractor at every tier) to purchase and maintain the same types of insurance with substantially the same terms, conditions, and limits of liability as required herein of Contractor or as specified herein for Subcontractor. Failure of Contractor or any of its Subcontractor(s) to maintain insurance for a minimum of thirty-six months after Final Completion as required by these Contract Documents shall be deemed a material breach of these Contract Documents allowing the Owner to terminate these Contract Documents or to provide insurance at the Contractor's sole expense, in neither case, however, shall Contractor's liability be lessened.

## **C. GENERAL REQUIREMENTS**

1. Notice of Occurrence: Upon the Contractor's knowledge of any occurrence or claim which may reduce or materially affect the aggregate amount of insurance coverage available to the Owner pursuant to these Contract Documents, Contractor shall (i) immediately provide the Owner with written notice of such occurrence, event or third-party claim(s) with reasonable detail, and (ii) promptly obtain replacement insurance for the eroded aggregate limit and provide the Owner with evidence thereof.

2. Evidence of Insurance: Contractor shall submit to the Owner within ten (10) calendar days after award of the Contract to Contractor and prior to commencement of the Work, certificates evidencing the effectiveness of the foregoing insurance policies. Contractor shall, within thirty (30) days of Owner's request during the term of these Contract Documents, provide Owner with a full and complete copy of all insurance policies purchased and maintained by Contractor

pursuant to these Contract Documents. Annually for a period of thirty-six months following Final Completion, the Contractor, upon written request from the Owner, shall promptly provide the Owner with certificates of insurance to the Owner evidencing the effectiveness of the insurance coverages required pursuant to these Contract Documents, and if requested by Owner, original copies of the complete policies, including all endorsements.

3. Deductibles: Except with respect to the insurance required of Owner pursuant to Article I.D., Contractor shall be responsible for the payment of any and all deductible(s) or retention(s) under the policy or policies of insurance purchased and maintained by each pursuant to these Contract Documents. With respect to Contractors work, and regardless of the cause(s) of loss or fault, Contractor shall be responsible for and pay upon demand the first Five Thousand Dollars (\$5,000.00) of any deductible existing in the Property insurance purchased by Owner pursuant to this agreement, without any adjustment whatsoever in the Contract Sum. If more than one (1) Contractor submits a claim for the same covered event, the \$5,000.00 deductible shall be shared by the Contractors submitting claims on a pro-rated basis, based on the value of the Contractors' respective claims.

4. Additional Insured: The Owner and their respective board members, officers, administrators, members, employees, representatives, agents, and consultants shall be named as additional insureds, on the Contractor's Commercial General Liability policy, Automobile Policy, and Excess/Umbrella Liability. The extent of the additional insured coverage shall be no less broad than that provided under ISO Form CG 20 26 11/85 for General Liability and Umbrella/Excess Liability and ISO Form CA 20 48 02/99 for Auto Liability. The additional insured coverage afforded under the Contractor's policies shall include both ongoing operations (work in progress), and completed operations (completed work). Additional insured coverage shall be maintained for a minimum of thirty-six months after Final Completion.

5. Primary Coverage: Except with respect to the insurance required of Owner under the Contract Documents, if any, the insurance coverage to be purchased and maintained by Contractor as required by herein shall be primary to any insurance, self-insurance, or self-funding arrangement maintained by Owner which shall not contribute therewith, and there shall be severability of interests under the insurance policies for all coverages provided under said insurance policies and otherwise provide cross liability coverage.

6. Insurer Rating: All insurance required to be purchased and maintained by Contractor shall be placed and maintained with insurance companies rated, currently and for at least the previous two years, at least equal to the AM Best's Rating of A, financial size of X, licensed to do business in Ohio; where commercially feasible admitted to do business in Ohio.

Owner's review, receipt and/or acceptance of any insurance policy purchased and maintained by Contractor, or a certificate of insurance evidencing such insurance, shall not constitute Owner's approval of such insurance or Owner's agreement that such insurance satisfies the insurance requirements set forth in these Contract Documents.

7. No Limitation: The types and limits of insurance to be purchased and maintained by the Contractor pursuant to these Contract Documents shall not be deemed to constitute a limitation of the Contractor's liability or indemnification obligations hereunder.

8. Purchase of Insurance: If the Contractor fails to purchase and maintain, or fails to continue in force throughout the term of these Contract Documents and until Final Completion, insurance in the types and with limits of liability required herein, Owner may purchase such insurance and the cost thereof shall be borne by Contractor, and shall be deducted from any amounts due and owing by the Owner to Contractor. If such amounts are insufficient, the Contractor agrees to promptly pay the Owner the amount incurred by the Owner to purchase such insurance.

#### **D. PROPERTY INSURANCE**

1. Contractor's Property Insurance: Contractor shall purchase and maintain Property insurance covering construction machinery, equipment, mobile equipment, special equipment, falsework, scaffolding, materials, valuable papers, trailers, and tools used or owned by Contractor in the performance of the Work. Owner shall in no circumstance be responsible or liable for the loss or damage to, or disappearance of, any property listed above used or owned by Contractor or its Subcontractor(s) in the performance of the Work.

2. The Owner shall purchase and maintain Property insurance with respect to materials, tools, equipment, buildings, and buildings in the course of construction, related to the Project, owned or used by the Owner, and written on a builder's risk "all-risk" or equivalent policy form in an amount determined by Owner in its sole discretion. Owner shall continue to purchase and maintain Property insurance coverage for all existing buildings, or portions of those buildings, upon which Work will not be performed pursuant to these Contract Documents.

3. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies issuing such Property insurance and shall, without the mutual written consent of Owner and Contractor, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

4. A loss insured under the Property insurance required herein shall be adjusted by the Owner and made payable to the Owner for prompt payment to the payee(s) under the Property insurance, as their interests may appear.

5. The Owner shall deposit in a separate account Property insurance proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration or judicial award.

6. The Owner 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 as provided in these Contract Documents. The Owner shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

#### **E. WAIVER OF SUBROGATION**

1. Notwithstanding anything to the contrary contained herein, the Contractor and its board members, officers, administrators, members, employees, representatives, agents, and consultants, and the Owner and its board members, officers, administrators, members, employees,

representatives, agents, and consultants, waive all rights of recovery against each other, and their insurer's(s') rights of subrogation for damages caused by fire or other causes of loss to the extent covered by Property insurance obtained or required to be obtained (whichever is broader) pursuant to these Contract Documents, except such rights as they have to proceeds of such insurance held by the Owner for prompt payment to the payee(s) under the Property insurance. The Contractor and its board members, officers, administrators, members, employees, representatives, agents, and consultants, as appropriate, shall require the Subcontractor(s), its board members, officers, administrators, members, employees, representatives, agents, and consultants, 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 by endorsement or otherwise. A waiver of right of recovery or 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.

2. The Contractor and its officers, administrators, members, employees, representatives, agents, and consultants, waive all rights of recovery and their insurer's(s') rights of subrogation against the Owner and its trustees, board members, officers, administrators, members, employees, representatives, agents, and consultants for the Project for any and all loss, liabilities, damages, costs, including defense and indemnity, incurred or arising from an occurrence or incident to the extent covered by the insurance policies obtained or required to be obtained (whichever is broader) pursuant to this Agreement except such rights they may each have, individually or collectively, to the coverages and proceeds of such insurance. Contractor, as appropriate, shall require of the subcontractor, sub-subcontractor, 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 by endorsement or otherwise. A waiver of right of recovery or 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. The provisions of this Paragraph shall apply to all insurance subject to this agreement except the Property insurance referred to in and that is the subject of Section E. 1.

## **F. BONDS**

1. Bid Guaranty: Bidder shall furnish a Bid Guaranty, as prescribed in Section 153.54 of the Ohio Revised Code, in the form of either: (1) a bond for the full amount of the bid (including add alternates) in the form of the Bid Guaranty and Contract Bond included in the Contract Documents; or (2) a certified check, cashier's check, or irrevocable letter of credit in an amount equal to 10% of the bid amount (including add alternates) made out to the Rocky River City Schools. Note that the Bidder may leave the amount on the Bid Guaranty and Contract Bond form blank and it will be deemed to cover the amount of the base bid plus all add alternates.

2. Contract Bond: The successful bidder who, as a Bid Guaranty, submits a certified check, cashier's check, or irrevocable letter of credit in an amount equal to 10% of the bid amount (including add alternates), shall furnish a Contract Bond in the form included in the Contract Documents in an amount equal to 100% of the Contract Sum.

3. The bond must be issued by a surety company authorized by the Ohio Department of Insurance to transact business in the State of Ohio. The bond must be issued by a surety capable of demonstrating a record of competent underwriting, efficient management, adequate reserves, and sound investments. These criteria will be met if the surety currently has an A.M. Best Company Policyholders Rating of "A-" or better and has or exceeds the Best Financial Size Category of Class VI.
4. All bonds shall be signed by an authorized agent of an acceptable surety and by the bidder. (Affix Corporate Seals to all copies.)
5. Surety bonds shall be supported by credentials showing the power of attorney of the agent, and a certificate showing the legal right of the surety to do business in the State of Ohio, and a financial statement of the surety.
6. The Bid Guaranty, as applicable, shall be in the name of or payable to the order of the Owner.
7. The name and address of the surety and the name and address of the surety's agent should be typed or printed on each bond.

#### **G. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Contractor shall indemnify, defend, protect, and hold harmless the Owner, its Board Members, officers, directors, administrators, representatives, agents, employees, and anyone else acting for or on behalf of any of them (herein individually called "Indemnitee" and collectively called "Indemnitees") from and against all liabilities, damages, losses, claims, demands, lawsuits, proceedings, arbitrations, and actions of any nature whatsoever ("Claims") to the extent caused by the negligence of the Contractor, its agents or their respective employees and that arise out of or are connected with, or are claimed to arise out of or be connected with:
  - (a) The performance of Work or any act or omission of the Contractor, its agents or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable;
  - (b) Any accident or occurrence which happens, or is alleged to have happened, in or about the place where such Work is being performed or in the vicinity thereof (a) while the Contractor is performing the Work, either directly or indirectly, or (b) while any of the Contractor's property, equipment or personnel are in or about such place or the vicinity thereof by reason of or as a result of the performance of the Work; or
  - (c) The use, misuse, erection, maintenance, operation or failure of any machinery or equipment (including, but not limited to, scaffolds, derricks, ladders, hoists, rigging supports, etc.) whether or not such machinery or equipment was furnished, rented or loaned by the Owner or their Board Members, officers, administrators, employees, agents, servants or others, to the Contractor.

2. Without limiting the generality of the foregoing, such defense and indemnity includes all Claims on account of bodily and personal injury, death or property damage and loss to any Indemnitee, any of Indemnitee's Board Members, administrators, employees, agents, contractors or subcontractors, licensees or invitees, or any other persons, whether based upon, or claimed to be based upon, statutory (including, without limiting the generality of the foregoing, worker's compensation), contractual, tort or other liability of any Indemnitee or any other persons. In addition, the Claims indemnified against shall include all Claims for trademark, copyright or patent infringement, for unfair competition or infringement of any other so-called "intangible" property rights, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatever or which arise out of any failure of the Contractor to discharge its duties specified in the Agreement.

3. The Contractor expressly understands and agrees that any performance bond or insurance protection required by the Agreement, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, save, and hold harmless and defend the Indemnitees as herein provided.

4. Any Indemnitee, at its election, may defend against or settle any Claim, or at the request of any Indemnity, the Contractor shall assume the defense on behalf of such Indemnitee, of any such Claim, provided however, that any attorney employed in such defense must be satisfactory to such Indemnitee.

5. The Contractor, shall bear any and all reasonable expense incurred by any Indemnitee because of any Claim or other matter indemnified against hereunder, including without limitation, attorneys' and consultants' fees and expenses, court costs, and costs related to the defense of, or preparing for the defense against, any such Claim, even if such Claim is groundless, false or fraudulent. If any such Claim has not been settled or discharged when the Work is finished, the Owner may withhold an amount equal to 150% of the outstanding claim until (a) any such Claim is paid or settled, (b) the Contractor provides a bond, acceptable to the Owner, to satisfy such Claim or (c) the Contractor provides reasonable evidence that the Claim is covered by applicable insurance.

6. In any and all Claims against the Indemnitees by any employee of the Contractor, a Subcontractor, their agents, or 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 Section shall not be limited in any way by a limitation on the 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.

7. As between the Owner and the Contractor, the Contractor hereby waives its immunities under Ohio Revised Code Chapter 4123, Article 3 of the Ohio Constitutional or any similar Workers' Compensation statutory immunity for the purposes of conforming to the indemnity obligations under this Section.

8. The Contractor shall further indemnify, defend, protect, and hold harmless the Indemnitees from and against any and all Claims and shall bear any and all expense, whether incurred or paid, of any Indemnity (including without limitation, attorneys' and consultants' fees



and expenses, costs related to preparing for and/or defending any action and court costs) suffered, incurred or arising from the failure of the Contractor or those acting under him to execute the Work in accordance with the laws, statutes, ordinances, and regulations of any governmental authority.

9. The Contractor shall pay any judgment finally awarded in any Claim which is brought against any Indemnitee, regardless of whether the Indemnitee or the Contractor directs the defense thereof, and shall pay any amounts payable in settlement or compromise of any such Claim.

10. The provisions contained herein shall in no way be deemed released, waived, or modified in any respect by reason of any insurance or bond provided by the Contractor pursuant to the Agreement.

11. In the event that the Contractor is requested but refuses to honor its indemnity obligations hereunder, then the Contractor shall, in addition to its other obligations, pay the cost of bringing any action to enforce the Contractor's indemnity obligations, including, without limitation, attorneys' and consultants' fees, expenses, and court costs, to the party requesting indemnity.

12. For the purposes of hereof, "Work" shall mean the labor and services, or any portion thereof, provided by the Contractor under this Agreement.

## **SUPPLEMENTAL CONDITIONS OF THE CONTRACT OF CONSTRUCTION**

### **Rocky River City School District Board of Education**

#### **Liquidated Damages Provision**

The contents of these Supplemental Conditions amend and supersede any provisions on the Insurance, Waiver of Subrogation, Bonds and Indemnification contained in the AIA A107 – 2007 Contractor-Owner Agreement.

Time is of the essence of this Contract. If the Contractor shall neglect, fail, or refuse to complete the Work within the time specified or fails to complete a portion of the Work within the time specified for such Work, then the Contractor does hereby agree, as a part of the consideration for awarding of this Contract, to pay to the Owner, as liquidated damages and not as a penalty, the sum of Five Hundred Dollars (\$500) per day for each calendar day beyond the dates set forth herein. Said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and extreme difficulty of fixing and ascertaining the true value of the damages which the Owner will sustain by failure of the Contractor to complete the Work on time or a portion of the Work by the established deadline, such as loss of revenue, service charges, interest charges, delays caused to other construction activities of Owner by failure to perform this Contract, and other damages, some of which are indefinite and not susceptible to easy proof, said amount is agreed to be a reasonable estimate of damages which the Owner will sustain and said amount shall be deducted from any monies due or that may become due to the Contractor, and if said monies are insufficient to cover said damages, then the Contractor shall pay the amount of the difference.