



Pennsylvania Association of School Business Officials

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2016-2017 Workshop Series

ISSUING BIDS AND RFPs – HOW TO PROTECT YOUR SCHOOL DISTRICT WITH PROPER FORMS AND SPECIFICATIONS

November 3, 2016

Webcast (9:30 – 11:00 AM)

School business officials (including business managers, facilities directors, food service directors, technology directors and purchasing agents) are required to prepare bids and RFPs to solicit various outside parties, including contractors to work on small construction projects, vendors to sell supplies and equipment, and professionals to enter into service contracts. This webinar will address the documents necessary to protect your School District, including appropriate language for advertisements and terms and conditions, when and why to include bid bonds and performance bonds, and various other important information. Attendees will be provided specific guidance and examples of specific “boiler plate” language, as well as a practical checklist for bids/RFPs.

WHO SHOULD ATTEND:

Business Managers, Asst. Business Managers, Facilities Directors, Food Service Directors, Technology Directors, Anyone involved with purchasing for the district

SPEAKERS:

Randall S. Buffington, M.Ed., PRSBA, Director of Operations, Southern York County SD
Howard L. Kelin, Esquire, Managing Partner, Kegel Kelin Almy & Lord LLP
Katie L. Summers, Esquire, Kegel Kelin Almy & Lord LLP

ANNOUNCEMENTS:

- All participants must sign-in on the Webcast Attendance Form found at the back of the handout packet for attendance/credit tracking. The site coordinator is asked to collect and submit information on every participant at your site. For credit to be given, forms must be returned to PASBO by November 10.
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Thank you for your participation!



Pennsylvania Association of School Business Officials

Issuing Bids and RFPs – How to Protect Your School District with Proper Forms and Specifications

November 3, 2016 - Webcast
(9:30 – 11:00 AM)

Listen to audio over your computer speakers
(If you prefer to listen by phone, you may dial-in using the
numbers at the top of your screen. Phone lines will be
available 10 minutes prior to the event start.)

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Presenter(s):

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Topics to Address

- Key legal rules: Katie
- Legal forms and specifications: Howard
- Practical tips from an “insider”: Randy
- Your questions

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Key Legal Rules

- PA School Code, 24 P.S. § 7-751: school construction, repairs and maintenance
- PA School Code, 24 P.S. § 8-807.1: furniture, equipment and supplies
- Commonwealth Procurement Code, 62 Pa C.S. § 1902: cooperative/joint purchasing arrangements
- This is not an in-depth legal review of the bidding process, rather just a quick overview to “set the table” for discussion of legal forms and specifications

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School Code § 751 – very basic details

- Applies to “construction, reconstruction, repairs, maintenance or work of any nature . . . upon any school building or upon any school property.”
- Mandatory bidding required if construction costs exceed \$18,500, subject to inflation index (for 2016, bidding threshold is \$19,400).
- If bidding is required, must have “multiple prime contacts” for general construction, mechanical, plumbing and electrical work.
- Contracts awarded to the “lowest responsible and responsive bidder” for each contract.

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School Code § 751 – very basic details (cont.)

- Exception to bidding requirements for “emergencies” that render a building “unusable,” but PDE is strict on requiring truly “unusable”.
- Three written or telephone quotes needed if construction costs are below bidding threshold but exceed \$10,000, subject to inflation index (for 2016, quote threshold is \$10,500).
- No bids or quotes required if construction costs are below \$10,500.
- Cannot “piecemeal” a single project into multiple projects to evade need for bids or quotes.
- Districts may perform building maintenance through their own employees regardless of cost.

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School Code § 751 – very basic details (cont.)

- Bidding not required for schools to contract for construction-related “services”
 - architect
 - engineers and consultants (if not subcontracted by architect)
 - construction manager, clerk of the works, etc.
 - construction law attorney
- Where bidding is not required, districts often use a Request for Proposal (more on RFP forms later)

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School Code § 807.1 – very basic details

- Applies to “furniture, equipment, textbooks, school supplies and other appliances for the use of the public schools.”
- Except for ***non-textbook classroom materials***, which are exempt: “maps, music, globes, charts, educational films, filmstrips, prepared transparencies and slides, pre-recorded magnetic tapes and disc recordings, textbooks, games, toys, prepared kits, flannel board materials, flash cards, models, projectuals and teacher demonstration devices necessary for school use.”

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School Code § 807.1 – very basic details (cont.)

- Same threshold amounts for bidding (\$19,400) and three quotes (\$10,500) as with construction projects.
- Same “lowest responsible and responsive bidder” rules as with construction projects.
- Same prohibition against “piecemealing” as with construction projects.

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Commonwealth Procurement Code, 62 Pa. C.S. § 1908

- Allows individual government entities to “piggyback” on cooperative/joint purchasing arrangements.
- Statute says: School Districts may purchase items under a contract awarded by a “public procurement unit” or an “external procurement activity” if the “public procurement unit” or “external procurement activity” complied “with the requirements governing its procurement” of the contract.

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Commonwealth Procurement Code, 62 Pa. C.S. § 1908 (cont.)

Three basic questions to ask about cooperative/joint purchasing:

1. Was the contract awarded by a public entity?
2. Did the public entity follow its legally-required procurement process?
3. Was the item you are purchasing included in the awarded bid? (A frequent issue is whether “installation” was included in the bid as an “ancillary service”).

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Legal Form and Specifications

- For larger construction projects involving an architect
 - Architect normally provide a complete “bidding package”
 - Subject to review and comment by the school district and its attorney
- For projects not involving an architect, sometimes an engineer or other consultant will provide a bidding package.
- However, where a bidding package is not provided by others, proposed forms are attached.

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Proposed forms for construction projects:

- A. Advertisement for Bids
- B. Instructions to Bidders
- C. Agreement with contractor
- D. Amendments to AIA Document A107 – 2007
- G. Performance Bond (performance & payment bonds are required for construction projects over \$5000)
- H. Non-Collusion Affidavit

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Supplemental forms for construction projects (provided by district/consultant/attorney):

- E. Copy of AIA Document A107 – 2007 (do not use sample attachment)
- F. Payment Bond (AIA Document A312 – 2010)
- I. Description of Work and Technical Specifications
- J. Drawings (if applicable)
- K. Bid Form (if applicable)
- L. Prevailing Wage Rate Information (if applicable)

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Forms for purchase of furniture, equipment and supplies

- Can use much of the package for construction projects.
- Payment/Performance Bonds are not required, but Performance Bond might be useful for more costly orders.
- Form of agreement: Instead of using amendments to AIA Document A107 – 2007, which is for construction projects, see attached “Agreement with Vendor.”
- Vendors often have their own “Terms and Conditions” – confer with your legal counsel for guidance on risks to your district.

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Requests for Proposals

- May be used for service providers, where mandatory public bidding is not required.
- Not required to use RFPs for service providers, but often a worthwhile approach.
- Where the District will ultimately enter a written contract with the selected service provider, “best practice” is to include the form of contract the District will want to enter.

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Requests for Proposals (cont.)

- Particularly with architects and construction managers, including a form of contract with the RFP benefits the District.
- Specifically defines the scope of services, standards and rules/protocol the District desires.
- Puts all applicants on the “same level playing field,” so the District can make an “apples-to-apples” comparison
- Leave a blank to be completed only for the fee to be charged – that way, the District knows what services it will be getting for the fee being charged.
- Otherwise, for instance, an architect’s 5.5% fee for its version of “Basic Services” might end up costing more than another architect’s 6% fee that involves more “Basic Services” and fewer charges for “Additional Services.”
- Do not need to select “lowest cost provider,” and can select architect or construction manager based upon other factors such as quality of services, references, past projects, etc.

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Checklist for Bid File Folders

- | | |
|---|-----------------------------|
| • Board approval of advertisement | • Bid tabulation |
| • Pre-bid conference | • Notification of bid award |
| • Date of bid opening | • Certificate of insurance |
| • Date of bid award | • Performance bond |
| • Bid awarded to/amount | • Labor and Material Bond |
| • Purchase Order | • Proof of advertisement |
| • Certificate of Completion | • Bid specifications |
| • Progress Reports | • List of bidders |
| • Change Orders | • Prevailing wage reports |
| • Public Works Employment Verification Form | • Specification work sheet |
| • Background Clearances | • Addenda |

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Checklist for Creating Specifications

- Table of contents
- Invitation to bid
- Scope of work
- Instructions to bidders
- Completion date or calendar days
- Bid security
- Contractor's insurance
- Separate primes
- Bid/Proposal form
- Labor and Material bond
- Performance bond
- No cash allowance provision
- Competent Workmen Clause
- Human Relations Compliance
- Standard of quality clause
- Domestic steel
- Clearances
- Public works employment verification form

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Project Schedule

TASK	START DATE	FINISH DATE
Board approval to advertise for bids	1/21/16	1/21/16
Prevailing wage request	1/8/16	1/11/16
Advertise for bids	1/25/16	2/8/16
Pre-bid conference (10:00 a.m.)	2/12/16	2/12/16
Bid opening (10:00 a.m.)	2/17/16	2/17/16
Board awards contract	2/18/16	2/18/16
Notify successful bidder	2/19/16	2/19/16
Contractor submittals	2/19/16	6/6/16
Project begins	6/6/16	--
Project completion	--	7/29/16

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Bidders List

- Promote projects & competitive bidding
- Track interest
- Pre-bid

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Time for Questions



- Send text questions using the “Chat” function at the left side of your screen.
- Type message in box and click “Enter” to send.

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REMINDER:

Webcast sites are asked to have every participant sign-in on the Attendance Form and return to the PASBO Office for attendance and credit purposes.

Forms must be received by November 10.

Thank you for your participation!



Join us at these upcoming programs:

- TAX COLLECTORS COMPENSATION AND BEST PRACTICES FOR WORKING WITH TAX COLLECTORS – November 4, PM Webcast
- FOOD SERVICE CONFERENCE & COMMODITY SHOW – November 8-9, State College
- FRAUD PREVENTION: ARE YOU PREPARED? ENCORE – November 14, Cranberry Twp
- ELEMENTS OF SCHOOL FINANCE – November 17/Cranberry Twp, November 18/Kulpsville
- ELEMENTS OF HUMAN RESOURCES – December 2, Harrisburg
- MARKETING YOUR LEA – December 6, Webcast
- PROFESSIONAL STANDARDS: TRAINING YOUR FOOD SERVICE STAFF IS THE LAW! – December 7, Webcast

For info, visit www.pasbo.org/workshops

_____ **SCHOOL DISTRICT**
[address]
[phone number]

PROJECT NAME: _____

A: ADVERTISEMENT FOR BIDS

Sealed bids for [summarize project] will be received by _____ School District until [insert date and time]. Bids shall be submitted to the Business Department of [name and address of school district]. Bids will be publicly opened and read aloud after the specified closing time. Bidding requirements and specifications are available at: [identify where to obtain bidding information].

_____ School District reserves the right to reject any and all bids, and to waive any bid irregularities as permitted under Pennsylvania law.

Name and title of business official

B. INSTRUCTIONS TO BIDDERS

This bid package was prepared on behalf of _____ School District (hereinafter referred to as the “District,” the “School District” or “Owner”). The bid package includes the following documents, which along with any addenda issued by Owner before the opening of bids, and any Change Orders or Construction Change Directives after entering this Agreement, shall be the “Contract Documents” governing the bidding and contracting for this project:

- A. Advertisement for Bids
- B. Instructions to Bidders
- C. Agreement with Contractor
- D. Amendments to AIA Document A107 – 2007
- E. Copy of AIA Document A107 – 2007 [To be provided by district/consultant/attorney]
- F. Form of Payment Bond, AIA Document A312 – 2010 [To be provided by district/consultant/attorney]
- G. Form of Performance Bond
- H. Instructions for Non-Collusion Affidavit and Non-Collusion Affidavit
- I. Description of Work and Technical Specifications [To be provided by district/consultant]
- J. Drawings [To be provided by consultant; if applicable]
- K. Bid Form [To be provided by district/consultant/attorney]
- L. Prevailing Wage Rate Information [To be provided by district/consultant/attorney; if applicable]

Prospective bidders are advised that this project *will be* subject to provisions of the Pennsylvania Prevailing Wage Act. [if applicable]

The following rules and procedures shall apply to bidding:

1. Bids must be submitted on the Bid Form supplied by the District. Each bid must be delivered to the Business Department of _____ School District, located at _____, prior to the time stated in the advertisement for bids. This is the responsibility of the bidder. Bids received after the time set for bid opening, even if postmarked earlier, will not receive consideration. Bids will not be accepted by facsimile.
2. Bids shall be submitted sealed in an envelope that displays clearly the name of the project in question, the bid date and the time of bid opening.
3. All bids submitted must be typewritten or legibly written in ink, and must be signed by the bidder on the Bid Form supplied as part of this bid. Bids altered in any way will not be accepted (i.e. erasures, white out, etc.).
4. Bidders for construction projects shall visit the site to familiarize themselves with the work and all job conditions related to the work. In submitting a bid, a bidder represents that it has carefully examined the plans, specifications and site of the work and that from its own investigation it has satisfied itself as to the nature and location of the work, the character, quality and quantity of surface and sub-surface materials likely to be

encountered, the character of equipment and other facilities needed for performance of the work, the general and local conditions, and all other matters which may, in any way, effect the work or its performance.

5. Each bid shall be accompanied by bid security in the amount of 10% of the base bid, utilizing the AIA Document A310 – 2010 bid bond form, or utilizing a bank cashier or Treasurer’s check payable to _____ School District.
6. A payment bond covering 100% of the contract amount utilizing the AIA Document A312 – 2010 payment bond form, and a performance bond covering 100% of the contract amount utilizing the form included with this bid package, will be required before entering into a contract with the Owner, and within five (5) days of receiving a notice of intention to award a contract.
7. Additional rules governing bids:
 - a. Unless permitted by 73 P.S. § 1602 to withdraw a bid within two business days after the bid opening date due to a clerical mistake as opposed to a judgment mistake, no bid may be withdrawn before the expiration of sixty (60) days from the date established for the opening of the bids, or before the expiration of one hundred twenty (120) days in the event the award of bids is delayed by the required approval of another government agency, the sale of bonds or the award of grants.. All bids shall remain valid and acceptable for the foregoing length of time. This time may be extended by the mutual consent of the bidder and the District.
 - b. Bids will be publicly opened on the date, at the location and commencing at the time stated in the advertisement of bids. Bidders or their authorized agents may be present.
 - c. The District intends to accept the bid of the lowest responsible bidder complying with all bidding requirements. The District reserves the right to reject any or all bids, and to waive any bid irregularities as permitted under Pennsylvania law.
 - d. The bidder must demonstrate a successful track record in the performance of like work or the supplying of like product. *Four references* including name, address, telephone number, contact person, and scope of product or service provided are to be submitted with the Bid Form. In addition, before any award is made, the District may require satisfactory evidence to show that the bidder is a responsible bidder as contemplated under Pennsylvania law.
 - e. The bid shall include all costs to install the work by the bidder. Any damage to the District’s building(s) or equipment caused by the bidder shall be the responsibility of the bidder.
 - f. The Non-Collusion Affidavit included in this bid package must be completed and submitted with the bid.

C. AGREEMENT WITH CONTRACTOR

_____ SCHOOL DISTRICT

This is an agreement (the "Agreement") dated _____,
between _____ School District, [insert address] ("Owner") and the
following trade contractor,

("Contractor"), for Contractor to perform work on a construction project for Owner.

In exchange for the consideration identified herein, and intending to be legally bound,
Owner and Contractor agree that this Agreement incorporates the terms of AIA Document A107
-2007 (Standard Form of Agreement Between Owner and Contractor for a Project of Limited
Scope), as amended in accordance with the terms below.

The specifics of this Agreement are as follows:

1. Project name: _____
2. Type of work to be performed by Contractor (general trades, electrical, plumbing,
HVAC, etc.): _____
3. Architect (or other consultant who shall be perform duties assigned to the "Architect"):

4. Contract sum: _____
5. By signing below, Owner and Contractor agree to the terms of AIA Document A107 –
2007, and the following Amendments thereto:

For Contractor (name and title): _____

For Owner (School Board President) _____

D. AMENDMENTS TO AIA DOCUMENT A107 – 2007

_____ SCHOOL DISTRICT

[name of project]

These amendments contain modification of and additions to AIA Document A107 – 2007, "Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope," for the Agreement to be entered into between _____ School District (the "School District," the "District" or the "Owner") and the Contractor.

If no specific Architect is identified in the Agreement, the Owner or its designee shall perform activities assigned to the Architect in AIA Document A107 – 2007 and in these amendments thereto.

ARTICLE 2 – DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

Add Subparagraphs 2.3.1 and 2.3.2, as set forth below:

2.3.1 The Contractor acknowledges that time is of the essence to achieve **Substantial Completion of the Work by [INSERT DATE], and Final Completion of the Work by [INSERT DATE]**. The Contractor agrees that all Work shall be executed diligently with trained workers in sufficient number and at a rate of progress that the Contractor meets these deadlines. The Contractor shall prepare and provide the Owner a project schedule identifying how the Contractor plans to meet these deadlines within one week of signing a written agreement with the Owner, and shall update such schedule during the course of the Work whenever the schedule changes or upon request of the Owner for an updated schedule.

2.3.2 Should the Contractor fail to meet the Substantial Completion deadline, unless the deadline is extended as provided in the Contract Documents, the Contractor (and the Contractor's Surety) shall be liable for and shall pay to the Owner **the sum of [INSERT AMOUNT] as liquidated damages** for each calendar day until the Work has reached Substantial Completion. The Owner's right to receive liquidated damages shall be in addition to all other rights and remedies available to the Owner at law or in equity. **The Contractor agrees that such daily amount of liquidated damages is a fair and reasonable pre-estimate of loss and does not constitute a penalty, agrees not to challenge such daily amount and agrees to pay the Owner's legal fees in the event of such challenge.**

ARTICLE 4 – PAYMENTS

Replace Subparagraph 4.1 in its entirety (including Subparagraphs 4.1.1 through 4.1.5) with the following:

4.1. Based upon **Applications for Payment** submitted by the Contractor, certified by the Architect and approved by the Owner, the Owner shall make payments to the Contractor within **ten (10) days of approval by the Owner's Board of School Directors.**

4.2.2 Add the following after "or as follows:"

Final payment shall be made within 10 days of approval by the Owner's Board of School Directors.

ARTICLE 5 – DISPUTE RESOLUTION

Insert the following as Paragraph 5.1:

5.1. Binding dispute resolution shall be by arbitration at the sole option of the Owner, pursuant to the rules of the American Arbitration Association, or otherwise by bench trial (no jury) in the Court of Common Pleas for the County in which the Project is located.

ARTICLE 7 – GENERAL PROVISIONS

Add Subparagraphs 7.1.1, 7.1.2 and 7.1.3 as follows:

7.1.1 Where the Contract Documents do not identify specific quality or standards for materials or workmanship, such Work is to be of good quality and fit for the intended use and purpose thereof.

7.1.2 Any indication or notation applicable to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes, except where a contrary result is indicated by the Contract Documents.

7.1.3 Any inconsistencies between different provisions of the Contract Documents shall be construed in the manner that provides the greatest value or betterment to the Owner.

Add the following to the end of Subparagraph 7.5.1:

7.5.1 [added] The Contractor shall be entitled to receive without charge five (5) sets of prime Contract Documents and one (1) set of documents for each other prime Contract (if any).

ARTICLE 8 – OWNER

Replace Subparagraphs 8.1.1 and 8.1.2 in their entirety with Subparagraph 8.1.1 as follows:

8.1.1 The Owner shall not be responsible to furnish surveys of the Project site or utility locations for the Project site. The Contractors shall have no claims for surface or subsurface conditions, whether unforeseen, foreseen, or foreseeable. The Contractor shall exercise special care in executing subsurface work in proximity of subsurface utilities, improvements and easements.

8.2 In Paragraph 8.2, delete the word "repeatedly."

8.3 In Paragraph 8.3, change "ten-day " to "five-day."

Add Paragraph 8.4 as set forth below:

8.4 Owner's rights set forth in Paragraph 8.2 and 8.3 shall be in addition to all other rights of the Owner established in the Contract Documents, at law or in equity.

ARTICLE 9 – CONTRACTOR

Replace Subparagraph 9.1.1 in its entirety with the following:

9.1.1 The Contractor warrants that it has carefully studied and reviewed the Contract Documents and has reported any errors, inconsistencies or omissions to the Architect. The Contractor hereby acknowledges and declares that to Contractor's knowledge the Contract Documents are full and complete, are sufficient to have enabled the Contractor to determine the cost of the Work and fulfill all of the Contractor's obligations under the Contract Documents. The Contractor shall immediately report any error, inconsistency or omission it encounters to the Architect for resolution. If the Contractor performs any construction activity knowing or having reason to know that it involves an error, inconsistency or omission, the Contractor shall bear the cost of correction.

Add Subparagraphs 9.2.3 through 9.2.9 as set forth below:

9.2.3 The Contractor shall perform its Work in accordance with the Contract Documents and in a professional, businesslike and workmanlike manner. Among other things, at completion of the Work, the Contractor shall thoroughly clean the site and remove from the site all tools, equipment, obstructions and debris resulting from the Work.

9.2.4 Standard of Quality; The various materials and products specified in the specifications by name or description are given to establish a standard of quality and of cost for bid purposes. It is generally the intent to describe the minimum standard, and not to limit the bidder to any one material or product. However, where "no substitutions" are identified or where proprietary names are used, the Contractor must provide the specified project for compliance with the Owner's requirements.

9.2.5 The Contractor shall abide by all federal, state and local legal requirements applicable to this project, including requirements imposed by statute, regulation, code, ordinance, administrative rule or by order of any court or administrative agency. This includes, but is not limited to, requirements governing health, safety, labor and environmental protection. Among other things, the Contractor shall submit an MSDS form (or other required form) and proper labeling to the Architect in advance of each chemical being used.

9.2.6 The Contractor shall perform its Work in a manner to interfere as little as possible with the normal conduct of school activities, using its best efforts to protect the safety of students, employees and School District property. No interruption to, or interference with, any of the services such as heating, lighting, plumbing, etc., together with all normal means of ingress and egress to buildings and property will be allowed without express permission of the School District.

- 9.2.7 The Contractor's Work shall be at all times subject to the inspection and approval of the School District. Any materials that in the opinion of the School District do not comply with the Contract Documents will be rejected and shall be immediately removed from the site. Any workmanship that in the opinion of the School District does not comply with the Contract Documents shall be stopped at once, and corrective measures shall be instituted at once.
- 9.2.8 For a Project with multiple prime contractors, all Contractors are responsible for the coordination and integration of their respective scopes of Work. The General Trades Contractor is responsible for making all coordination decisions not mutually agreed upon by affected Contractors. The Owner and its consultants or agents shall not be liable for any costs incurred by an Contractor due to failure of Contractors to coordinate and integrate their Work or due to any delays in the Work. If a Contractor causes damages or additional costs to another Contractor (including by causing delays, interferences, hindrances, loss of efficiencies or acceleration of Work), an adversely impacted Contractor will have a third-party beneficiary claim for legal action against the responsible Contractor. All Contractors acknowledge and accept the right of other Contractors to bring such third-party beneficiary claims, waive any privity of contract defense against such claims, and agree not to include the Owner its professional consultants or agents as parties in any such legal action.
- 9.2.9 Contractor shall not assign its duties under this Agreement without the express written approval of Owner's Board of School Directors.

Add Subparagraphs 9.3.4 through 9.3.7 as set forth below:

- 9.3.4 All persons employed by the Contractor to perform the Work shall be competent and first-class workmen and mechanics, who are duly skilled in their respective branches of labor.
- 9.3.5 Should the Owner object in writing to any personnel of Contractor or any Subcontractor, such person shall not perform services on the Project, and there shall be no change in the Contract Sum as a result of such objection.
- 9.3.6 The Contractor shall assign an on-site Superintendent for the project, who shall not be replaced so long as the Superintendent remains in the Contractor's employment without written consent by the Owner, and who shall be replaced without any change in the Contract Sum if the Owner, in its discretion, so requires.
- 9.3.7 Background Check Requirements (Act 34 and Act 151)

For any employee or other representative of the Contractor or its subcontractors who enters the work site, the Contractor shall provide the District originals (or notarized copies satisfactory to the Owner) of criminal record and child abuse background check reports. When an original background check report is provided, the School District will copy and return the original to the Contractor. The reports must be provided before any employee or other representative of the Contractor or its subcontractors enters the work site. Failure to comply with these requirements is a breach of the contract between the

Contractor and the School District, will result in withholding of contract payments, and may result in assessment of a penalty under applicable law. The Contractor is responsible for ensuring compliance with these requirements by all its subcontractors. Required reports include criminal history record information from the Pennsylvania state police and FBI pursuant to the School Code, 24 P.S. § 1-111 (Act 34). Such criminal history record information shall be no more than five-years old. As to child abuse reports, the Contractor must provide for all such individuals an official clearance statement pursuant to the Child Protective Services Law, 23 Pa. C.S.A. § 6355 (Act 151). Such child abuse information shall be no more than five-years old.

- 9.4 In Paragraph 9.4, end the second sentence after the words “free from defects” and delete the remainder of the sentence.

Add Subparagraph 9.5.1 as set forth below:

- 9.5.1 The Contractor shall claim tax exemptions for items that are tax exempt. The Contractor assigns to the Owner the right to collect any refund of taxes that are paid on tax exempt items.

- 9.6.2 In Subparagraph 9.6.2 add "or having reason to know" after "knowing" in the third sentence.

Add Subparagraph 9.6.3 as set forth below:

- 9.6.3 The Contractor is responsible for performing or coordinating proper inspections of the Work in accordance with federal, state and local statutes, codes and regulations.

- 9.8.2 In Subparagraph 9.8.2, add the following to the end: “, and in accordance with time limits in the Contract Documents.”

Add Subparagraph 9.12.1 as set forth below:

- 9.12.1 Representatives of governmental agencies shall have access at all reasonable times to inspect the Work, and the Contractor shall provide proper facilities for such access and inspection.

- 9.15.1 Delete from the first sentence of Subparagraph 9.15.1 the following: “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),”

ARTICLE 11 – SUBCONTRACTORS

- 11.2 In Paragraph 11.2, delete the word “reasonable” from the second sentence and delete the third sentence in its entirety.

ARTICLE 13 – CHANGES IN THE WORK

Add the following Subparagraphs 13.2.1 through 13.2.4 to Paragraph 13.2 as follows:

- 13.2.1 Labor. Labor costs shall include the certified Base Prevailing Wage Rate (or the base wage rate if the Prevailing Wage Act is not applicable to the Project), plus actual fringe benefits per wage determination plus 25% for FICA, SUTA, FUTA and Workers' Compensation. No costs beyond those listed will be considered. Total labor cost for the Contractor's employees shall be this cost plus a mark-up of 15% for overhead and profit. This mark-up includes all overhead, including supervisory personnel, estimators, staff, office time, etc.
- 13.2.2. Material, Supplies and Equipment: Costs shall be the invoice cost, plus sales tax, plus a mark-up of 10% for overhead and profit.
- 13.2.3 Bonds and Insurance: Costs shall be submitted without mark-up.
- 13.2.4 Overhead and Profit on Subcontractor Labor: For work performed by a Subcontractor, the Contractor's cost shall be limited to the total Subcontractor's invoice plus a mark-up of 5% for the Contractor's overhead and profit. Subcontractors' invoice for hourly wages and material costs must be in accordance with the above definitions.

13.4 Delete Paragraph 13.4 in its entirety.

ARTICLE 14 – TIME

14.4 In Paragraph 14.4, insert "and approved by the Owner" after "Architect"

Replace Paragraph 14.5 in its entirety with the following

14.5 In the event of Project delay that the Owner determines in its discretion to be beyond the reasonable control or anticipation of the Contractor, the Owner may approve a Change Order extending the Contract Time. The Contractor shall not, though, assert any claim for additional payment due to, relating to or arising from Project delay. Should the Contractor violate this provision and assert a claim for additional payment due to, relating to or arising from Project delay, the Contractor shall be liable to the Owner for any costs incurred by the Owner (including fees charged to the Owner by attorneys, architects or other consultants of the Owner) associated with defending against such claim. See Subparagraph 9.2.7 for the right of Contractors to pursue third-party beneficiary claims against other Contractors causing Project delay.

ARTICLE 15 – PAYMENTS AND COMPLETION

Add Subparagraph 15.1.5 as follows:

15.1.5 Payments shall be made in accordance with Article 4 of this Agreement, subject to the retainage set forth in the Commonwealth Procurement Code, 62 Pa. C.S.A. Section 3921. Until 50% of the Work is completed, the Owner will pay 90% of the amount due the Contractor on account of monthly progress payments. When the Work is 50% completed and a request in writing from the Contractor has been submitted, the Architect and the Owner will consider a reduction of Retainage to 5%. Along with the written request the

Contractor shall submit Consent of Surety to Reduction in Retainage, form AIA G707A (or other form acceptable to the Owner). However, at all times retainage may be increased from the above amounts by the Owner in its sole discretion, if it believes additional retainage is appropriate to protect the Owner from potential financial loss or risk based upon any reasons identified in Subparagraph 15.2.3.

15.2.2 In Subparagraph 15.2.2, in the second sentence, after “upon” insert “or after” and replace “minor deviations from the Contract Documents prior to completion” with “deviations from the Contract Documents”

15.2.3. In Subparagraph 15.2.3, make the following changes:

At the end of the first sentence add the following: “, and the Owner may disapprove a Certificate of Payment for the same reasons.”

In the fourth sentence, after “The Architect may also withhold a Certificate for Payment” insert “and the Owner may also disapprove a Certificate for Payment” and after “the Architect’s” add “or the Owner’s”

In Subparagraph 15.2.3.2, replace “reasonable evidence indicating probable filing of such claims” with “directly or impliedly threatened”

In Subparagraph 15.2.3.4, delete the word “reasonable”

In Subparagraph 15.2.3.6, delete the word “reasonable”

In Subparagraph 15.2.3.7, delete the word “repeated”

Add the Subparagraph 15.2.5 as follows:

15.2.5 The Contractor may not stop or delay Work or terminate the Contract because the Architect withholds certifications for an Application for Payment in whole or in part.

15.3.1 At the end of Subparagraph 15.3.1, add the following:

The Contractor shall comply with the Pennsylvania Contractor and Subcontractor Payment Act.

15.4.3 In Subparagraph 15.4.3, after “which” insert “, if approved by the Owner,”

15.4.4 In Subparagraph 15.4.4, replace “if any,” with “if required by the Owner,”

15.5.2 In Subparagraph 15.5.2, in the first sentence insert “the Owner has approved such payment,” after “until”

Delete Subparagraph 15.5.3 in its entirety and replace with the following:

15.5.3 The making of final payment shall not constitute a waiver of any claims by the Owner.

ARTICLE 17 – INSURANCE AND BONDS

Add Subparagraphs 17.1.1 through 17.1.3 as set forth below

17.1.1 In addition to the foregoing requirements, all insurance policies and bonds required for this Project shall be issued by companies with an A.M. Best Financial Strength rating of at least A-

17.1.2 Certificates of Insurance acceptable to the Owner and on forms approved by the Insurance Commissioner of the Commonwealth of Pennsylvania shall be filed with the Owner prior to commencement of the Work. The Certificates shall contain a provision that coverages afforded under the policies will not be cancelled, reduced or non-renewed unless at least thirty (30) days prior written notice has been given to the Owner. Except for Workers' Compensation Insurance, the Owner shall be named with respect to the Project as an additional insured on all insurance. The Contractor shall furnish to the Architect copies of all endorsements that are subsequently issued amending coverage or limits.

17.1.3 During the term of the Contract, and for Comprehensive General Liability and Excess Liability for one year after the completion of the Work, the Contractor and each Subcontractor shall, at their own expense, purchase and maintain the following insurance in companies properly licensed and satisfactory to the Owner.

Workers' Compensation and Employer's Liability

Amounts and coverage as required by Law and the Excess (Umbrella) Liability Insurance Company.

Comprehensive General Liability

Including coverage for premises, operations, independent contractors, elevators, contractual liability, products, completed operations, Broad Form property damage, explosion, collapse, and underground property damage, personal injury. No deductible permitted. Coverage amount limit shall be a minimum of one million dollars (\$1,000,000.00).

Excess (Umbrella) Liability Insurance

Bodily Injury and Property Damage following the form of the aforementioned Comprehensive General Liability, Comprehensive Automobile Liability, and Employer's Liability. Coverage amount limit shall be a minimum of two million dollars (\$2,000,000.00) Bodily Injury and Property Damage combined. No deductible permitted. No "gaps" permitted between primary and excess coverage.

The Owner shall be named as Certificate Holder. The Owner and Architect shall be named as Additional Insured under this policy for this Project.

Delete Paragraph 17.3 in its entirety (including Subparagraphs 17.3.1 through 17.3.4) and replace it with the following:

17.3 The Owner shall provide Builder's Risk Insurance at its option.

17.4.1 Add the following to the end of Subparagraph 17.4.1:

The Contractor shall provide a performance bond and a labor and material payment bond, each in the amount of 100% of the contract price, in forms required by the Owner, within five (5) days of receiving notice of the intent to award the bid to the Contractor.

ARTICLE 18 – CORRECTION OF WORK

18.1 End the second sentence of Paragraph 18.1 after the words “at the Contractor’s expense” and delete the remainder of the sentence.

18.2 In Paragraph 18.2, replace “within one year” with “anytime” in the first sentence, and delete the second and third sentences.

18.4 Delete Paragraph 18.4 in its entirety.

18.5 Delete Paragraph 18.5 in its entirety.

ARTICLE 19 – MISCELLANEOUS PROVISIONS

19.4 Delete “Owner and” from the first and second sentences, in the first sentence replace “other” with “Owner” and in the second sentence replace “waive” with “waives”

Add the following Paragraph 19.5:

19.5 No cash allowances are included in this Project.

Add the following Paragraph 19.6:

19.6 The Contractor shall comply with the Employment Verification Act, as follows:

- (1) The Pennsylvania Public Works Employment Verification Act (43 P.S. §§ 167.1-167.11) requires Contractors and Subcontractors performing work on “public works projects” to comply with federal employment eligibility requirements, including verification through the U.S. Department of Homeland Security’s E-Verify program which compares I-9 employment verification data to data from the Department of Homeland Security and Social Security Administration records, in order to confirm that employees are authorized to work in the United States.
- (2) All Contractors shall submit a “Public Works Employment Verification Form” to the Owner through the Architect at the same time when performance and payments bonds are submitted. Submission of this form is a precondition of the Contract being awarded and executed. These requirements apply to all employees hired by the Contractor or Subcontractor regardless of whether the employee will be working onsite or offsite.

- (3) Subcontracts between the Contractor and its Subcontractors or between any Subcontractor and its Subcontractors are required to contain notification of applicability of the Act, the requirement to provide a “Public Works Employment Verification Form” as stated under number 4 below, and reference to the Department of General Services website as stated under item number 6 below.
- (4) All Subcontractors shall submit a “Public Works Employment Verification Form” to the Contractor, who shall submit the form to the Owner through the Architect prior to the Subcontractor beginning either onsite or offsite work. Submission of this form shall be a precondition of the Subcontract remaining in force, and the Contractor shall terminate the Subcontract if the Subcontractor does not comply. These requirements apply to all employees hired by the Subcontractor regardless of whether the employee will be working onsite or offsite. “Subcontractor” includes any entity that performs work on the project other than the prime Contractor and other than an individual. The term does not include an entity that is solely a material supplier for the project.
- (5) The Contractor or Subcontractor shall be responsible for any penalties imposed for failure to comply with this Act.
- (6) Contractors and Subcontractors may access the form at www.dgs.state.pa.us. The Chapter 66 Guidelines may be located at <http://www.pabulletin.com/secure/data/vol42/42-52/index.html>.

Add the following Paragraph 19.7:

19.7 The Contractor agrees to comply with the Pennsylvania Human Relations Act, 43 P.S. § 951, et. seq., which prohibits discrimination in employment on account of race, color, familial status, religious creed, ancestry, age, sex, national origin, handicap, disability or use of guide of support animal, and to comply with the additional non-discrimination provisions applicable to public works in Pennsylvania, 62 Pa. C.S. § 3701:

- (1) In the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor or any person acting on behalf of the contractor or subcontractor shall by reason of gender, race, creed or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- (2) No contractor or subcontractor or any person on their behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under the contract on account of gender, race, creed or color.
- (3) The contract may be canceled or terminated by the government agency, and all money due or to become due under the contract may be forfeited for a violation of the terms or conditions of that portion of the contract.

Add the following Paragraph 19.8:

19.8 If the Work includes the installation of steel, steel products or steel machinery and equipment, the Contractor shall comply with Pennsylvania’s Steel Product Procurement

Act, 73 P.S. § 1881, et seq., as amended, which requires that steel products produced in the United States be utilized in public works.

ARTICLE 20 – TERMINATION OF THE CONTRACT

20.1 Delete Paragraph 20.1 in its entirety.

20.2.1 Change Subparagraph 20.2 as follows:

In Subparagraph 20.2.1.1, delete "repeatedly"

In Subparagraph 20.2.1.3, delete "repeatedly"

In Subparagraph 20.2.1.4, delete "substantial"

20.2.2 In Subparagraph 20.2.2, change "seven" to "five."

20.3 In Paragraph 20.3, end the second sentence after the words "payment for Work executed" and delete the remainder of that sentence.

ARTICLE 21 – CLAIMS AND DISPUTES

21.1 In Subparagraph 21.1, delete the second sentence.

Replace Subparagraphs 21.2 through 21.5 in their entirety with Subparagraph 21.2 as set forth below:

21.2 Any controversy, dispute or Claim arising hereunder that is not resolved to the satisfaction of all parties by the Architect shall be resolved by binding arbitration only if arbitration is selected by the Owner, pursuant to the rules of the American Arbitration Association. In the absence of such selection by the Owner, any controversy, dispute or Claim arising out of or related to the Contract Documents, or the breach thereof, shall be settled by non-jury trial in the Court of Common Pleas in the county where the Project is located. All parties hereby consent to such jurisdiction and venue and irrevocably waive any right to a jury trial.

Replace Paragraph 21.8 in its entirety with the following:

21.8 The Contractor waives any claim for consequential damages arising out of or relating to the Contract Documents or from any breach or violation thereof.

G. PERFORMANCE BOND

Bond No.: _____ Amount: \$ _____

_____, as principal (the "Contractor"), and

_____, as surety (the "Surety"), are firmly bound to

_____ SCHOOL DISTRICT

as obligee (hereinafter called the "Owner"), in the sum of _____ Dollars (\$ _____), for the payment of which we bind ourselves, our heirs, executors, legal representatives, successors and assigns, jointly and severally, by this Bond.

Background. The Contractor submitted to the Owner a bid (the "Bid") to perform certain _____ Work for the Owner in connection with a project known as [name of project], such Work to be performed pursuant to plans, specifications and other related contract documents that are incorporated into the Bid by reference. The Bid and other contract documents shall be deemed a part hereof as fully as if set out herein, and shall together be referred to as the "Contract Documents." The Owner is a "contracting body" under provisions of Act No. 385 of the General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known and cited as the "Public Works Contractors' Bond Law of 1967" (the "Act"). Under the Contract Documents, it is provided that if the Contractor shall furnish this Bond to the Owner, and if the Owner shall make an award to the Contractor in accordance with the Bid, then the Contractor and the Owner shall enter into an agreement with respect to performance of such work (the "Agreement"), the form of which Agreement is set forth in the Contract Documents. It is a condition of the Contract Documents that this Bond shall be furnished by the Contractor to the Owner.

NOW, THEREFORE, intending to be legally bound, the Contractor and Surety agree as follows:

1. The Contractor and the Surety, jointly and severally, bind themselves for performance of the obligations of the Contractor under the Agreement and other Contract Documents, and to all of the terms of this Performance Bond. The Contractor and Surety understand that time is of the essence in performing their respective obligations under the Contract Documents and this Bond.

2. The Contractor and Surety will be relieved of their obligations under this Bond if and when the Contractor shall perform all of its obligations under the Agreement and other Contract Documents in the manner provided therein, including the making of any payments due to the Owner

and its employees, directors or agents, and the Contractor and the Surety shall perform all of their obligations under this Bond. This Bond shall remain in force and effect until all of the foregoing conditions are fulfilled.

3. If the Owner terminates its Agreement with the Contractor for cause pursuant to the Contract Documents or if the Contractor has abandoned its work in violation of the Contract Documents, the Surety will have the following rights and obligations:

a. As Option 1, the Surety shall fulfill the performance of all obligations of the Contractor under the Contract Documents and this Bond. Pursuant to Option 1, any replacement contractor retained by the Surety to fulfill the performance of the obligations of the Contractor must be qualified as a responsible contractor under Pennsylvania law. The original Contractor shall not serve as the Surety's replacement contractor. The Surety shall provide the Owner, upon request, information on the pertinent qualifications of any proposed replacement contractor. The Owner will pay the unpaid contract price to the Surety as work progresses, under the payment terms of the Contract Documents.

b. As Option 2, the Surety may request to enter a written agreement with the Owner, pursuant to which the Owner shall complete all unfulfilled work of the Contractor pursuant to the Contract Documents, with reimbursement from Surety to Owner if the cost of finishing the work, together with all other expenses for which the Surety is liable, exceeds the unpaid balance to the Contractor under the Contract Documents. If the Surety wishes to make a request to the Owner pursuant to Option 2, it must do so within 30 days of receipt of written notice by the Owner that the Agreement with the Contractor has been terminated or that the Contractor has abandoned its work under the Contract Documents. The Owner shall be under no obligation to accept a request by the Surety to utilize Option 2, and if such a request is not timely made or is denied, the Surety shall proceed pursuant to Option 1.

4. Without limiting the obligations otherwise stated in this Bond, the Surety shall be liable under this Bond to pay the Owner the following to the extent the Contractor does not make such payment to the Owner: (a) any money the Contractor is obligated to pay the Owner under the Contract Documents, including any liquidated damages; and (b) any cost, expense, liability or damage incurred by the Owner (including any fees or costs of attorneys, architects, engineers, construction managers or other consultants) arising from (i) any default, failure or termination of the Contractor, (ii) the Owner's enforcement of Contractor or Surety obligations under this Bond, or (iii) any delay in performance of the Contractor's scope of Work caused by the Contractor or Surety that violates a project schedule approved pursuant to the Contract Documents, without regard to whether such delay occurs before or after commencement of the Surety's obligations pursuant to Paragraph 3 of this Performance Bond.

5. Amounts due and not paid to Owner when due under this Bond shall bear interest from the date the payment is due at the legal rate prevailing in Pennsylvania.

6. This Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract Documents not increasing the contract price more than twenty percent (20%), so as to bind the Contractor and the Surety to the performance of the Contract Documents as so amended, and so as to increase the Bond amount by the increased contract price amount. The term "amendment," wherever used in this Bond and

whether referring to this Bond, the Contract Documents, or the Agreement shall include any alteration, addition, extension or modification of any character whatsoever.

7. The Contractor and the Surety agree that none of the following will in any way reduce the Surety's obligations under this Bond, and the Surety waives notice of any of the following: (1) any change, alteration or addition to the terms of the Contract Documents or to the work to be performed thereunder; (2) any extension of time; (3) any act of the forbearance of either the Contractor or the Owner toward the other; (4) any acceleration of payments to the Contractor resulting in payments to the Contractor of more than the amount to which the Contractor is entitled under the Contract Documents or in advance of the time required under the Contract Documents.

8. No settlement between the Owner and the Contractor shall abridge the right of any other beneficiary hereunder having a claim not yet asserted or satisfied.

9. Owner's acceptance of the Contractor's work under the Contract Documents or approval of final payment to the Contractor shall not terminate the performance obligations of Contractor and Surety under the Contract Documents and this Bond, and shall not waive any later claim for nonperformance.

10. Owner may at any time, but is not obligated to, notify Surety of Owner's concerns about Contractor performance, and send to Surety copies of any communication to Contractor.

11. This Bond shall be interpreted in accordance with the laws (including the common law) of the Commonwealth of Pennsylvania. Exclusive jurisdiction and venue for any litigation concerning this Bond shall exist in the Court of Common Pleas in the county in which the project is located. The Contractor and the Surety waive a jury trial in any such litigation.

12. This Bond is executed and delivered under the subject to the Act.

IN WITNESS WHEREOF, the Contractor and the Surety cause this Bond to be signed, sealed and delivered this _____ day of _____, 20_____.

(Individual Contractor)

WITNESS:

_____(SEAL)
Signature of Individual
Trading and Doing Business As

(Partnership Contractor)

WITNESS:

Name of Partnership

_____ By: _____ (SEAL)
Partner

_____ By: _____ (SEAL)
Partner

_____ By: _____ (SEAL)
Partner

(Corporation Contractor)

ATTEST:

Name of Corporation

By: _____
(Vice) President

(Assistant) Secretary

(CORPORATE SEAL)

or (If Appropriate)

Name of Corporation

WITNESS:

_____ *By: _____
Authorized Representative

*Attach appropriate proof, dated as of the same date as the Bond, evidencing authority to execute on behalf of the corporation.

(Corporation Surety)

Name of Corporation

WITNESS:

** _____
Attorney-in-Fact

**Attach an appropriate power of attorney, dated as of the same date as the Bond, evidencing the authority of the attorney-in-fact to act on behalf of the corporation.

H. INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT AND NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any contract awarded pursuant to this bid. According to the Pennsylvania Antibid-Rigging Act, 73 P.S. §§ 1611 et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with bids.
2. This Non-Collusion Affidavit must be executed by the member, officer or employee of the bidder who makes the final decision on prices and the amount quoted in the bid.
3. Bid rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the bidder with responsibilities for the preparation, approval or submission of the bid.
4. In the case of a bid submitted by a joint venture, each party to the venture must be identified in the bid documents, and an Affidavit must be submitted separately on behalf of each party.
5. The term “complementary bid” as used in the Affidavit has the meaning commonly associated with that term in the bidding process, and includes the knowing submission of bids higher than the bid of another firm, any intentionally high or noncompetitive bid, and any other form of bid submitted for the purpose of giving a false appearance of competition.
6. Failure to file an Affidavit in compliance with these instructions will result in disqualification of the bid.

NON-COLLUSION AFFIDAVIT

[name of project]

School District

State of _____ :

:
:
:
:

County of _____ :

I state that I am _____ of

(Title)

(Name of Firm)

and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors and officers. I am the person responsible in my firm for the price(s) and the amount of this bid.

I state that:

1. The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.
2. Neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.
3. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
4. The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
5. _____(name of firm), its affiliates, subsidiaries, officers, directors and employees are not under investigation by any governmental agency, and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows (explain any exceptions):

I state that _____ (name of firm) understands and acknowledges that the above representations are material and important, and will be relied on by _____ **School District** in awarding the contract(s) for which this bid is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from _____ **School District** of the true facts relating to the submission of bids for this contract.

(Signature, Name & Company Position)

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 20____.

(Notary Public)



AIA[®] Document A107[™] – 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.)

day of

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

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

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.

Init.

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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 the 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	Price
------	-------

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

(Federal, state or local laws may require payment within a certain period of time.)

§ 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.

§ 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 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.

Init.

§ 6.1.2 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ 6.1.3 The Specifications:

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

Section	Title	Date	Pages
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§ 6.1.4 The Drawings:

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

Number	Title	Date
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§ 6.1.5 The Addenda, if any:

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

§ 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.

§ 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 any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

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

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect 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 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.

§ 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 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

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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.

§ 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.

§ 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.

§ 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.

§ 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.

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, 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, or by written Construction Change Directive signed by the Owner and Architect.

§ 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, 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 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 will prepare a Change Order.

§ 13.3 The Architect 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 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 determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect 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, 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, 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 will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 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. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.2.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.2.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.2.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 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 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 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 will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect 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 will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions 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

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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 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 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 or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and

replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, 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 timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating 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 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, 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.

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§ 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 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, 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 but excluding those arising under Section 16.2, shall be referred initially to the Architect 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 or 30 days after submission of the matter to the Architect, 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)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

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AIA Documents on Demand®

Frequently Asked Questions – Updated February 2016

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AIA Documents on Demand is a web-based service that allows users with a computer and an internet connection to access more than 130 of the most popular AIA Contract Documents anytime, anywhere.

2. Which contract documents are available on AIA Documents on Demand?

1. A101™–2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum
2. A101™–2007 SP, Standard Form of Agreement Between Owner and Contractor, for use on a Sustainable Project where the basis of payment is a Stipulated Sum
3. A102™–2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
4. A103™–2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price
5. A105™–2007, Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project
6. A107™–2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope
7. A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, and A132™ Exhibit A, Determination of the Cost of the Work
8. A133™–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, and A133™ Exhibit A, Guaranteed Maximum Price Amendment
9. A134™–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price
10. A141™–2004, Standard Form of Agreement Between Owner and Design-Builder
11. A141™–2014, Standard Form of Agreement Between Owner and Design-Builder
12. A142™–2004, Standard Form of Agreement Between Design-Builder and Contractor
13. A142™–2014, Standard Form of Agreement Between Design-Builder and Contractor
14. A145™--2015, Standard Form of Agreement Between Owner and Design-Builder for a One or Two Family Residential Project
15. A151™–2007, Standard Form of Agreement Between Owner and Vendor for Furniture, Furnishings and Equipment where the basis of payment is a Stipulated Sum
16. A201™–2007, General Conditions of the Contract for Construction
17. A201™–2007 SP, General Conditions of the Contract for Construction, for use on a Sustainable Project
18. A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition
19. A251™–2007, General Conditions of the Contract for Furniture, Furnishings and Equipment
20. A305™–1986, Contractor's Qualification Statement

\$29.99

519.98

21. A310™–1970, Bid Bond
22. A310™–2010, Bid Bond
23. A312™–1984, Performance Bond and Payment Bond
24. A312™–2010, Performance Bond and Payment Bond
25. A401™–2007, Standard Form of Agreement Between Contractor and Subcontractor
26. A401™–2007 SP, Standard Form of Agreement Between Contractor and Subcontractor, for use on a Sustainable Project
27. A441™–2008, Standard Form of Agreement Between Contractor and Subcontractor for a Design-Build Project
28. A441™–2014, Standard Form of Agreement Between Contractor and Subcontractor for a Design-Build Project
29. A701™–1997, Instructions to Bidders
30. A751™–2007, Invitation and Instructions for Quotation for Furniture, Furnishings and Equipment
31. B101™–2007, Standard Form of Agreement Between Owner and Architect
32. B101™–2007 SP, Standard Form of Agreement Between Owner and Architect, for use on a Sustainable Project
33. B102™–2007, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services
34. B103™–2007, Standard Form of Agreement Between Owner and Architect for a Large or Complex Project
35. B104™–2007, Standard Form of Agreement Between Owner and Architect for a Project of Limited Scope
36. B105™–2007, Standard Form of Agreement Between Owner and Architect for a Residential or Small Commercial Project
37. B106™–2010, Standard Form of Agreement Between Owner and Architect for Pro Bono Services
38. B107™–2010, Standard Form of Agreement Between Developer-Builder and Architect for Prototype(s) for Single Family Residential Project
39. B108™–2009, Standard Form of Agreement Between Owner and Architect for a Federally Funded or Federally Insured Project
40. B109™–2010, Standard Form of Agreement Between Owner and Architect for a Multi-Family Residential or Mixed Use Residential Project
41. B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition
42. B142™–2004, Standard Form of Agreement Between Owner and Consultant where the Owner contemplates using the design-build method of project delivery
43. B143™–2004, Standard Form of Agreement Between Design-Builder and Architect
44. B143™–2014, Standard Form of Agreement Between Design-Builder and Architect
45. B144™ARCH-CM–1993, Standard Form of Amendment for the Agreement Between Owner and Architect where the Architect Provides Construction Management Services as an Adviser to the Owner
46. B152™–2007, Standard Form of Agreement Between Owner and Architect for Architectural Interior Design Services

→ Has both - but use only Payment Bond.



5. How do I purchase documents through AIA Documents on Demand?

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11. What if I have technical questions?

Technical Support can be reached Monday-Friday, from 8:30 am 12:00 noon and from 1:00 pm to 6:00 pm Eastern Time at 800.942.7732 or docstechsupport@aia.org.

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Yes, if you have an AIA Documents on Demand document and also have an AIA Contract Documents software product, simply use the import file functionality in the software product to import your final AIA Documents on Demand document.

1. From the Project tab of the software, select the project from the **Selected Project:** dropdown list.
2. Click **Import** on the navigation pane.
3. An **Import File** dialog box will ask you to select the file you would like to import.
4. Select the file that you would like to import and click **Open**.
5. The file will be saved to the selected project and the imported document will immediately be displayed on the Documents sub-tab.

AGREEMENT WITH VENDOR

_____ School District

This is an agreement (the "Agreement") dated _____,
between _____ School District ("District") and the following
vendor,

("Vendor"), for Vendor to provide goods to District after the award of a bid to Vendor.

The specifics of this Agreement are as follows:

1. The following identifies the bid that District has awarded to Vendor [identify by name/number of bid and any further appropriate description]:

2. Contract amount: _____

3. By signing below, and intending to be legally bound, District and Vendor agree to comply with all terms in the bidding documents (including specifications) of the bid that has been awarded to Vendor (the "Bidding Documents"), and also with the following "Terms and Conditions," which cannot be modified except in writing and signed by District's authorized representative::

a. The contract amount is F.O.B. to the location designated by District, freight prepaid. Vendor bears the risk of loss, injury, damage or destruction of goods until they are accepted by District.

b. Time is of the essence. If delivery is not timely, District reserves the right to either (i) cancel this Agreement, with Vendor paying or reimbursing District for additional costs of obtaining items elsewhere, or (ii) require Vendor to make late delivery, with Vendor paying or reimbursing District all costs and damages arising from Vendor's failure to make timely delivery. Vendor shall notify District in writing as soon as possible of any inability to make timely delivery.

- c. Goods must be properly packaged, and must not be damaged upon delivery.
- d. District has the right to inspect goods upon delivery, and reserves the right to inspect goods within a reasonable time after delivery, if immediate inspection at the time of delivery is not practical as determined by District.
- e. District may reject goods that are defective, not of good quality or otherwise do not comply with the Bidding Documents (including specifications) or these Terms and Conditions. Written notice (including email) of rejection shall be provided to Vendor within a reasonable time after District discovers that goods are defective, not of good quality or otherwise do not comply with the Bidding Documents (including specifications) or these Terms and Conditions.
- f. If District provides notice that it has rejected goods, Vendor shall have the opportunity to cure by paying for removal of the rejected good and delivering suitable goods within seven (7) days of such notice (or within such other time as agreed upon by District. If Vendor fails to cure in such manner, District shall have the right to enforce any or all of the following remedies:
- (i) The District may require that rejected goods be removed by Vendor or returned to Vendor, in either event at Vendor's expense.
 - (ii) The District may require that Vendor replace the rejected goods with suitable goods as soon as possible.
 - (iii) The District may obtain suitable goods from another source, and the Vendor shall pay or reimburse the District for any associated costs or damages in excess of the Vendor's contract amount.
 - (iv) The District may pursue any other remedy available in law or equity.
- g. If Vendor provides goods that are subject to any patent or copyright, Vendor agrees to indemnify and hold harmless the District for any suits, claims, judgments, damages and costs (including attorney's fees) incurred by or against District on account of any violation of such patent or copyright.
- h. Failure to enforce any of the provisions in the Bidding Documents (including specifications) or in these Terms and Conditions shall not constitute a waiver of such enforcement rights.

i. Vendor shall provide District with any documents required by law in connection with its awarded bid, including any material safety documents, at or before the time of delivery.

j. The laws (including common law) of the Commonwealth of Pennsylvania shall apply to this Agreement.

k. Any dispute arising under or relating to this Agreement shall be resolved through binding arbitration at the sole election of District pursuant to rules of the American Arbitration Association, or otherwise through a bench trial in the Court of Common Pleas where the District's Administrative Office is located, with all parties waiving the right to a trial by jury.

l. Vendor may not assign this Agreement and the bid awarded hereunder without express written consent by District.

o. If payment and/or performance bonds are included with the Bidding Documents, Vendor shall provide such bonds in the form required by the District, utilizing a surety qualified to do business in the Commonwealth of Pennsylvania and with an A.M. Best Financial Strength rating of at least A-.

Authorized representatives for District and Vendor have signed below.

For District (by School Board President): _____

For Vendor: _____

Print name and title of individual signing for Vendor: _____