



**McHenry County College  
Classroom / Office Carpet and Paint**

**Construction Management Manual**

**Issue for Bid Documents**

**February 18, 2013**



# **McHenry County College Classroom / Office Carpet and Paint**

## **Instructions to Bidders**



**PEPPER**  
CONSTRUCTION

**McHenry County College  
Classroom / Office Carpet and Paint**

**CRYSTAL LAKE, ILLINOIS**

**February 18, 2013**

**INSTRUCTIONS TO BIDDERS**

**PROJECT DESCRIPTION:**

The McHenry County College Classroom and Office new interior finish renovations. Work is scheduled for the spring 2013 and summer of 2013 with a completion date tentatively scheduled for the middle of August.

**Bid Packages:** Bid Package 01 – General Trades  
Bid Package 02– Carpet/ Resilient Flooring  
Bid Package 03 – Painting  
Bid Package 04 – Electrical

**2. PREPARATION OF BIDS**

Sealed Bids including 10% BID BOND are to be hand delivered by:  
**March 20, 2013 at 10:00 AM**

To the following address: McHenry County College  
8900 US Hwy 14  
Crystal Lake, IL 60012  
Attn: Jennifer Jones, Director of Business Services, rm. A246

A **mandatory** Pre-bid meeting and walk through will be held at McHenry County College (Meet at the Main Entrance) March 13, 2013 at 1:30PM (Board Room A217).

**Plans and Owner bidding information are available at Bidder's cost at:**

PLANS & SPECS  
10 North Martingale Road Suite 400  
Schaumburg, Illinois 60173  
Phone: 847-876-1003

-or-

BFHX Industries  
Arlington Heights, Illinois  
Phone: 847-593-3161, Option 1

### 3. Pepper Construction Management Manual

The following bid documents are provided:

- a) Instructions to Bidders
  - b) Bid Form
  - c) Certificates and Affidavits
  - d) Prime Trade Pre-Qualification Form
  - e) Labor Rate Sheet
  - f) Project Schedule
  - g) Bid Calendar
  - h) Change Order Analysis - Sample Sheet
  - i) Jobsite Safety Handbook
  - j) Code of Conduct
  - k) Bid Period Scope Sheets
  - l) Tax Exempt Letter
  - m) Bid Withdrawal / Exculpatory Clause / Resolution of Bid Disputes Documentation
  - n) PCC Prime Trade Agreement (Sample) & A201 General Conditions as modified
  - o) Insurance Requirements
  - p) Certified Payroll and Prevailing Wage
- *NOTE: It is the responsibility of the Subcontractor to review the drawings and specifications and advise Pepper Construction Company if additional documents are needed for the Subcontractor to complete pricing of the work.*

### 4. QUESTIONS

Submit questions concerning the project, **IN WRITING**, via Fax or E-Mail to the attention of **Brian Lucas / Ben Lusted (847-381-2760, [blucas@pepperconstruction.com](mailto:blucas@pepperconstruction.com) / [blusted@pepperconstruction.com](mailto:blusted@pepperconstruction.com))**. The Subcontractors shall **not** contact the architect and/or their consultants for any questions. **RFIs will not be accepted after 3PM on March 15, 2013.**

### 5. CONDITIONS AFFECTING THE WORK

It is **mandatory** that the Bidder visit the site during the Pre-Bid meeting in order to examine and familiarize itself with existing conditions under which the work is to be performed, which may impact the work and or the cost of the work. Conditions observed should be correlated with the requirements of the Contract Documents. Existing conditions include, but are not limited to: the existing site, existing structures (if any), obvious obstructions not detailed on the Bid Documents, etc. Failure to familiarize itself with local conditions shall in no way relieve the Bidder from the responsibility for properly estimating the difficulty and or costs of successful performing the work, and shall not be construed as a basis for subsequently initiating a change in the contract amount and/or time.

All Bidders are to include in their proposal the cost of missing design information or any items necessary for their respective trades, which would be required to fulfill the design intent of the contract documents. The intent of this is to ensure the Owner has purchased a complete and functional system. In any case of conflict between any of the contract documents, the more restrictive requirement of document requiring the greater quantity of work shall govern.

### 6. BID FORMAT

The bid forms should be filled out in their entirety. **If the form is not filled out, the bid may be considered as not responsive.** Attach any additional information requested to the Bid Form and complete any required submittals for prequalification with Pepper Construction Company.

### 7. TAXES



This project is **tax exempt**. Please see attached tax exempt letter.

**8. INSURANCE REQUIREMENTS**

See requirements included in this manual.

**9. JOBSITE STORAGE**

Jobsite storage of Prime Trade Contractor's material, tools and equipment is very limited. All deliveries must be coordinated with Pepper Construction Company's superintendent a minimum of (48) hours in advance. On site storage must be approved by Pepper's superintendent. Prime Trade Contractor's material, tools and equipment may be stored on the project at locations subject to the approval of Pepper. Any damage or loss of items stored at the jobsite will be the responsibility of the Prime Trade Contractor.

Each Prime Trade Contractor shall be responsible for the erection, dismantling, maintenance, utilities, security, etc., that may be necessary in setting up a storage area. Pepper reserves the right to have Prime Trade Contractors relocate their storage areas after twenty-four (24) hour notice period.

**10. LAYOUT AND ENGINEERING**

All Prime Trade Contractors will perform layout engineering as required to complete the work within the scope of their respective contracts. Notwithstanding the dimensions given on the specifications, shop drawings, and other documents, it shall be the obligation and responsibility of the trade contractors to take such field measurements to ensure the proper matching and fitting of the Prime Trade Contractor's work with the work of the other trades. Each Prime Trade Contractor shall provide his or her own layout. Pepper Construction Company shall provide control lines and control elevations only.

**11. LICENSE**

Any license or fees required to perform the work shall be the responsibility of each Prime Trade Contractor.

**12. PERMITS AND FEES**

All costs associated with permit and fees, shall be paid by the respective Prime Trade Contractor.

**13. EXPERIENCE MODIFIER RATING (EMR)**

Bidders are to include as part of their proposal the EMR Safety Modifier Rating as per the Bid Form.

**14. SCHEDULE**

Immediately after notice of intent to award, all Prime Trade Contractors will be required to attend a Schedule Coordination Meeting. All Prime Trade Contractors shall submit any additional activities or other information prior to this meeting. The intent of this meeting will be to finalize and agree to the construction schedule.

**15. CLEAN-UP**

Prime Trade Contractors will be required to clean up their respective work areas on a daily basis to a "broom clean" condition in order to keep the project clean, orderly, and hazard free. Upon completion of work, and prior to leaving the site, each Prime Trade Contractor must receive approval and acceptance by Pepper Construction Company that all final clean-up requirements have been met and that the area is ready for final inspection.

Trash dumpsters will be provided to the Prime Trade Contractors as long as the Prime Trade Contractor's breakdown their debris into the smallest possible form prior to placing it in the dumpster. Abuse of this privilege will result in the Prime Trade Contractor providing his own dumpster for the duration of the project, at their own cost.

Should the Prime Trade Contractor fail to clean up after himself on a daily basis, Pepper Construction reserves the right to perform the clean up and back charge the Prime Trade Contractor. This is the least desirable method and Pepper encourages all Prime Trade Contractors to avoid this situation.

**16. CUTTING AND PATCHING**

Each Prime Trade Contractor shall perform cutting, patching and disposal as required to complete the work within their scope of work.

**17. MISC. SUPPORTS, BRACKETS AND HARDWARE NOT SHOWN**

Any incidental supporting angles, clips, brackets, hardware, accessories or blocking, etc., which is inherent to the installation or construction of an assembly, but is not listed in the specifications, is to be included in the Prime Trade Contractor's proposal.

**18. TOILET FACILITIES**

Temporary toilet facilities will be provided at no additional cost to the Prime Trade Contractors.

**19. DUST CONTROL/TEMPORARY PROTECTION**

All subcontractors shall provide their own dust control as direct by Pepper. All Prime Trade Contractors to provide protection of the work and the existing conditions as needed to prosecute the work. Coordinate with Pepper Construction Company and other Prime Trade Contractors.

**20. FIRST AID**

Each Prime Trade Contractor will be required to maintain first aid equipment on site at all times.

**21. SAFETY**

All Prime Trade Contractors and vendors must comply with Pepper's Safety Program, in addition to all Federal, State and local requirements. Each Prime Trade Contractor will also be required to develop a project specific safety plan.

**22. TRAFFIC CONTROL**

All traffic control required for deliveries, flaggers, etc., will be the responsibility of the Prime Trade Contractor.

**23. SITE ACCESS**

The use of the site shall be restricted to those areas designated and coordinated with Pepper.

**24. MANAGEMENT**

Prime Trade Contractors shall assign a single Project Manager and a single Superintendent to this project. Attendance in to attend regularly scheduled project coordination meetings is mandatory while performing work or as requested by PCC. Failure to attend weekly coordination meetings without prior written approval from Pepper Construction Company project management will result in a \$250 deduct change order per occurrence.

**25. DAILY REPORTS**

All Prime Trade Contractors will submit to Pepper's site office, each day, a daily report indicating the manpower and brief description of the work that was performed on that day. Failure to comply will result in a \$250 deduct change order per occurrence.

**26. EXPEDITING**

The Prime Trade Contractor shall be responsible for the cost of expediting all deliveries in accordance with the project schedule.

**27. PARKING**

Parking at school lots may be available during construction but needs to be coordinated with McHenry County College and Pepper Construction Company prior to mobilization.

**28. TELEPHONES**

All Prime Trade Contractors shall provide their own phones.

**29. PLANS & SPECS**

Plans & Specs is the project management software that will be used for the project. All plans, bid packages, specifications, sketches, requests for information, submittals, meeting minutes, etc. will be located on Plans & Specs. Each Prime Trade Contractor will be required to use Plans & Specs to submit and receive all project information.

**30. PUNCHLIST**

It shall be understood that a quality product is expected at all times. As such, from time to time a "status of the project" report will be issued noting deficiencies which much be corrected. At the completion of each phase or scope, each contractor is responsible to review and inspect their work correct any deficiencies, and request an inspection. The Prime Trade Contractor will have no more than two (2) days to complete the architect's punchlist.

**33. AS-BUILT DRAWINGS**

All Prime Trade Contractors are required to maintain current and accurate as-built drawings at the site. From time to time, Pepper will request to review these drawings to ensure compliance. As-built documentation shall be submitted at the end of each phase as appropriate, in a neat and readable format.

**34. OPERATIONS & MAINTENANCE MANUALS**

Each Prime Trade Contractor shall be required to submit a draft copy of their Operations & Maintenance manual for review at 75% completion of their scope of work. Final Operations & Maintenance manuals shall be submitted no later than (5) days after substantial completion.

**35. QUALITY PROGRAM**

Pepper Construction Company has enacted a quality control program. Prime Trade Contractors will be required to complete pre-installation meeting, in place mock-ups, and trade item checklists.

**36. PRIME TRADE CONTRACTOR PREQUALIFICATION**

See requirements included in this manual. Please note prequalification forms must be submitted prior to the bid due date for ratings to be established prior to the bid opening.

**37. DELIVERIES**

All deliveries (material, equipment, etc.) shall be coordinated through PCC Superintendent with at least 48 hours notice prior to each delivery. Non-compliance will result in refusal of deliveries. Additionally food pantry activities may occur during this construction process that may further the impact of deliveries and will be coordinated through the PCC Superintendent.

**38. INSPECTIONS**

Please be advised that this project falls inside the jurisdiction of the McHenry County and Crystal Lake, and therefore will be subject to the township's standard permitting and inspection processes. Additionally, the owner will be retaining an independent inspection agency to perform all inspection services required for this project. All Prime Trade Contractors will be required to coordinate inspections with the Village of Crystal Lake, PCC, and the independent inspection agency representing the township.



**McHenry County College  
Classroom / Office Carpet and Paint**

**Bid Form**



**McHenry County College  
Classroom / Office Carpet and Paint**

**BID FORM**

**Revised Form – 2/18/2013**

Submitted By:

\_\_\_\_\_  
(Subcontractor)

Date: \_\_\_\_\_, 2013

\_\_\_\_\_  
(Address)

**BIDS DUE: March 20, 2013 @ 10:00AM**

McHenry County College  
8900 US Hwy 14  
Crystal Lake, IL 60012

Attn: Jennifer Jones, Director of Business Services

We, the undersigned Bidder having familiarized ourselves with the site, the local conditions affecting the cost of the Project and the Bidding and Contract Documents, including Addenda and all Invitation to Bid Addendum and Project Memos for the construction of the project **McHenry County College Classroom / Office Carpet and Paint** as specified, do hereby propose to provide and furnish all labor, materials, tools, equipment, utility and transportation services, scaffolding, insurance, supervision and all other services and facilities necessary, as required by said Contract Documents to complete all work as hereinafter designated, for the sum of money enumerated, the said amount, constituting the base bid, February 18, 2013 as prepared by Pepper Construction Company.

The Contract Documents that constitute the basis of our proposal for the work include the Construction Manager Manual, dated February 18, 2013, as prepared by Pepper Construction Company.

If awarded the Contract, the undersigned agrees to complete all work under the Base Bid and Alternates, in accordance with the Schedule specified in the Construction Management Manual.

**BASE BID**

All prices quoted represent the entire cost of the project in accordance with the bidding documents, not including the performance and payment bonds, (see Alternate A1) and we acknowledge that no subsequent claim will be recognized for any increase in wage scales, material prices, cost or any other rates affecting the construction industry and/or this project.

**Bid Package #:** \_\_\_\_\_

**Base Bid** \_\_\_\_\_

**Total Base Bid \$** \_\_\_\_\_

**McHenry County College**  
**Classroom / Office Carpet and Paint**  
**BID FORM**  
**Page 2 of 4**

Written : \_\_\_\_\_

**Addenda Acknowledgement**

Bidder acknowledges that having received the following addenda for the project :

Addendum # :

Date :

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Alternates/Break-Out Pricing**

The undersigned hereby proposes to furnish everything required for completion of the Alternates indicated. The following amounts for Alternate construction may be added to or deducted from the Base Bid, if selected.

Bidders are required to respond to all alternates, and shall indicate \$0 if there is no cost impact to their base bid. Alternate pricing shall be held until June 2013. Clearly designate if the Alternate is an Add or Deduct by circling the appropriate term.

**Alternates**

Alternate A1 : Provide Performance and Payment Bond

Add \$ \_\_\_\_\_

**Subcontractor Suggested Voluntary Alternates**

1. _____	Add/Deduct	\$ _____
2. _____	Add/Deduct	\$ _____
3. _____	Add/Deduct	\$ _____
4. _____	Add/Deduct	\$ _____

**EXPERIENCE MODIFICATION RATING (EMR)**

Provide your firm's Experience Modification Rating (EMR) for the last three (3) years. Please consult your insurance agent for this information.

2012 \_\_\_\_\_ 2011 \_\_\_\_\_ 2010 \_\_\_\_\_

**ITEMS TO BE RETURNED WITH BID FORM**

- ☐ Labor Rate Worksheets (All Trades)
- ☐ Please indicate that you have already submitted your Pre-Qualification Form to Pepper Construction for review.
- ☐ Non-Collusion Affidavit
- ☐ Bidder's Eligibility Certification
- ☐ Certificate of Compliance: Illinois Human Rights Act
- ☐ Certificate of Compliance: Illinois Drug-Free Workplace Act
- ☐ Supplementary Qualification Statement (See Spec Section 004513)

**Contact for Scope Review Meeting**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Company**

\_\_\_\_\_  
**Cell Phone #**

\_\_\_\_\_  
**Email Address**

**ADMINISTRATION OF CONTRACTS**

The undersigned, in submitting this document, agrees that if he is the successful Bidder, he will accept administration of the Contract by Pepper Construction Company and enter into a Contract according to the terms and conditions of the Pepper Construction Prime Trade Agreement, a sample of which is included in the contract documents, un-altered.

The undersigned agrees, within 10 days after notice of acceptance of this bid, to provide required Insurance and enter into Contract, for the Work.

In submitting this proposal, it is hereby understood that the Owner reserves the unrestricted privilege of rejecting any or all Bids, or parts of Bids, and to waive any informalities in Bidding.



**McHenry County College**  
**Classroom / Office Carpet and Paint**  
**BID FORM**  
**Page 4 of 4**

It is agreed that this proposal shall be irrevocable for a period of ninety (90) days after the specified date for receiving Bids.

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

\_\_\_\_\_  
(Firm Name)  
\_\_\_\_\_  
(By)  
\_\_\_\_\_  
(Title)  
\_\_\_\_\_  
(Date)

OFFICIAL ADDRESS

\_\_\_\_\_  
(Street)  
\_\_\_\_\_  
(City, State and Zip Code)

\_\_\_\_\_  
(Telephone No.)



**McHenry County College  
Classroom / Office Carpet and Paint  
Certificates and Affidavits**

**NON-COLLUSION AFFIDAVIT**

AFFIDAVIT: "I (we) hereby certify and affirm that my (our) proposal was prepared independently for this project/Work and that it contains no fees or amounts other than for the legitimate execution of this Work as specified and that it includes no understanding or agreements in restraint of trade."

(If an Individual)

Signature of Bidder \_\_\_\_\_ (Seal)

Business Address \_\_\_\_\_

---

(If a Partnership)

Firm Name \_\_\_\_\_ (Seal)

By \_\_\_\_\_

Business Addresses ( \_\_\_\_\_ )

of all Partners ( \_\_\_\_\_ )

of the Firm ( \_\_\_\_\_ )

---

(If a Corporation)

Corporate Name \_\_\_\_\_

By \_\_\_\_\_

Business Address \_\_\_\_\_

(CORPORATE SEAL)

Names of Officers: President \_\_\_\_\_

Secretary \_\_\_\_\_

Treasurer \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary

---

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

Date \_\_\_\_\_

**BIDDERS ELIGIBILITY CERTIFICATION**

(720 ILCS 5/33E, 33E-11)

Public Act 85-1295 (720 ILCS 5/33E, 33E-11) requires that all Contractors bidding for public agencies in the State of Illinois certify that they are not barred from bidding on public Contracts for bid rigging or bid rotation.

The following certification must be signed and submitted with bidder's bid proposal. FAILURE TO DO SO MAY RESULT IN DISQUALIFICATION OF THE BIDDER.

\_\_\_\_\_ as part of its bid on a Contract for

Contractor

***Classroom / Office Carpet and Paint*** for McHenry County College hereby certifies that said Contractor is not barred from bidding on the aforementioned Contract as a result of a violation of either Section 33E-3 or 33E-4 of the Criminal Code of 1961 of the State of Illinois (720 ILCS 5/33E-3, 33E-4).

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

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

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

Authorized Agent of Contractor

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

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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

**CERTIFICATE OF COMPLIANCE**  
**ILLINOIS HUMAN RIGHTS ACT**

All successful Contractors must comply with the provisions of the Illinois Human Rights Act (ACT) dealing with equal employment opportunities (Section 2-105, 775 ILCS 5/2-105) including equality of employment opportunity and the regulations of the Department of Human Rights of the State of Illinois. And also must provide for the adoption and implementation of written Sexual Harassment Policies. The Contract with the successful bidder will provide for this requirement. The statutory provisions require that the written Sexual Harassment policy included at a minimum the following information: (i) the illegality of sexual harassment, (ii) the definition of sexual harassment under Illinois Law, (iii) a description of sexual harassment, utilizing examples; (iv) a vendor's internal complaint process including penalty; (v) the legal recourse, investigative and complaint process available through the Department of Human Rights Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act (775 ILCS 5/6-101).

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

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

By: \_\_\_\_\_  
Authorized Agent of Contractor

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

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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

**CERTIFICATE OF COMPLIANCE**  
**ILLINOIS DRUG-FREE WORKPLACE ACT**

(Contractors with 25 or more Employees)

\_\_\_\_\_, a contractor having 25 employees, does hereby certify pursuant to Section 3 of the Illinois Drug-Free Workplace Act (30 ILCS 580 et sec 580-3) that [he, she, it] shall provide a drug-free workplace. For employees engaged in the performance of Work under the contract by complying with the requirements of the *Illinois Drug-Free Workplace Act* and, further certified, that [he, she, it] is not ineligible for award of this contract by reason of debarment for a violation of the *Illinois Drug-Free Workplace Act*.

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

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

By: \_\_\_\_\_  
Authorized Agent of Contractor

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

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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



**McHenry County College  
Classroom / Office Carpet and Paint**

**Prime Trade Contractor  
Pre-Qualification Form**

To access the prequalification form, use the website below and then click on the link "Subcontractor Prequalification Form". Once you click on the link it will give you all the information on how to become prequalified.

<http://www.pepperconstruction.com/illinois/Default.aspx?id=3088&tier1=6&tier2=1>

Pepper Illinois - Windows Internet Explorer

http://www.pepperconstruction.com/illinois/Default.aspx?id=3088&tier1=6&tier2=1

File Edit View Favorites Tools Help

Pepper Illinois

**PEPPER CONSTRUCTION**

Home  
About Us  
What We Build  
Success Stories  
Working At Pepper  
Subcontractor Prequalification Form

Contact Us  
Webcam  
Environmental Technologies

Subcontractor Prequalification Form

Pepper is built on a foundation of developing long-term relationships with a diverse group of the best subcontractors in our markets. Recently, Pepper has developed a Subcontractor Prequalification process to enhance these relationships. Now all Pepper subcontractors are required to have a current copy of the prequalification form on file as a precondition to new subcontractor awards. In addition, Subcontractor Prequalification increases the opportunity for subcontractors to work with Pepper on future projects. To fill out a prequalification form, please click the link below.

**Pepper Illinois News**

USA Metavac Facility Named Project of the Year

USA Metavac Facility Named Project of the Year

USA Metavac Facility Named Project of the Year

USA Metavac Facility Named Project of the Year



## **PRIME TRADE CONTRACTOR PREQUALIFICATION**

A contractor is considered qualified upon meeting the Financial and Safety Prerequisites as outlined below.

### **Financial Prequalification Requisites for Prime Trade Contractor are as follows:**

1. Bidder must submit financial statements for the last two (2) years that are compiled, reviewed, or audited by an independent accounting firm.
2. Financial data submitted must show a Current Ratio (Current Assets/Current Liabilities) of greater than 1.0.
3. Financial data must conform to at least 3 of the following 4 criteria:
  - a. Working Capital Turnover (Revenue/Working Capital) less than 36
  - b. Revenue to Equity less than 30
  - c. Total Liabilities to Equity less than 10
  - d. Positive earnings in at least one of the last two years
4. Contract awards will be limited to the lesser of 6 times Equity or 50% of Revenue.

### **Safety Prequalification Requisites for Prime Trade Contractor are as follows:**

1. Bidder must submit an OSHA 300A Log for the last three (3) calendar years that identify work place related injuries. Data must conform to at least 2 of the following 3 criteria:
  - a. 3 Year average recordable rate should be less than 6
  - b. 3 year average DART rate should be less than 4
  - c. 3 year average lost time accident rate should be less than 3
2. A bidder's OSHA citation information is collected for the last three (3) calendar years directly from the OSHA web site. The total score of the result of a. + b. + c. + d. below must be less than 3
  - a. "Other" Violation # x 1 (weighted) / Total # of Inspections
  - b. "Serious" Violation # x 1 (weighted) / Total # of Inspections
  - c. "Willful" Violation # x 3 (weighted) / Total # of Inspections
  - d. "Repeat" Violation # x 2 (weighted) / Total # of Inspections

Fill out forms from Pepper website ([www.pepperconstruction.com/illinois](http://www.pepperconstruction.com/illinois)) located under "Working with Pepper," and submit to: [prequal@pepperconstruction.com](mailto:prequal@pepperconstruction.com). See attached website image.

All information is destroyed immediately after use. It is the responsibility of the Prime Trade Contractor to obtain qualification status timely, no later than the day prior to the bid due date. Status will be determined within 72 hours after submittal, provided all requested information is received. Prime Trade Contractors may inquire about status to: 847-381-2760 – Brian Lucas (x4047) or Angela Conrad (x4037).

If the Prime Trade Contractor is not prequalified, the bid will not be accepted. Bidders envelopes will be returned, unopened.



# **McHenry County College Classroom / Office Carpet and Paint**

## **Labor Rate Sheet**

## LABOR RATE SHEET

PCC Job Name: McHenry County College - Class/ Office Carpet and Paint

PCC Job No.: \_\_\_\_\_

Company: \_\_\_\_\_

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

Union Local No. \_\_\_\_\_

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

Labor Classification: \_\_\_\_\_

Time and 1/2 after: \_\_\_\_\_ hours

Double time after: \_\_\_\_\_ Hours

Regular	Time & 1/2	Double Time
---------	------------	-------------

Base Rate

\$	\$	\$
----	----	----

Apprenticeship & Training

\$	\$	\$
----	----	----

Dues Deduction

\$	\$	\$
----	----	----

Health/Welfare

\$	\$	\$
----	----	----

Pension

\$	\$	\$
----	----	----

Promotion & Organization

\$	\$	\$
----	----	----

Safety

\$	\$	\$
----	----	----

Sub-Total

\$	\$	\$
----	----	----

Others:

Adjusted Workmens Comp.\*

\$	\$	\$
----	----	----

Advancement & Research

\$	\$	\$
----	----	----

Employer Paid Burden

\$	\$	\$
----	----	----

Insurance

\$	\$	\$
----	----	----

Medicare

\$	\$	\$
----	----	----

Savings

\$	\$	\$
----	----	----

Vacation

\$	\$	\$
----	----	----

F.I.C.A. @ % of Base \_\_\_\_\_ %

\$	\$	\$
----	----	----

Federal Unemployment Ins. @ % of Base \_\_\_\_\_ %

\$	\$	\$
----	----	----

State Unemployment Ins. @ % of Base \_\_\_\_\_ %

\$	\$	\$
----	----	----

Others:

\$	\$	\$
----	----	----

\$	\$	\$
----	----	----

\$	\$	\$
----	----	----

\$	\$	\$
----	----	----

Sub-Total

\$	\$	\$
----	----	----

10% Overhead

\$	\$	\$
----	----	----

5% Profit

\$	\$	\$
----	----	----

Total Rate / Hour

\$	\$	\$
----	----	----

Workmens Comp. Code \_\_\_\_\_

EMR \_\_\_\_\_

Adj. Workmens Comp. Rate\* \_\_\_\_\_

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

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

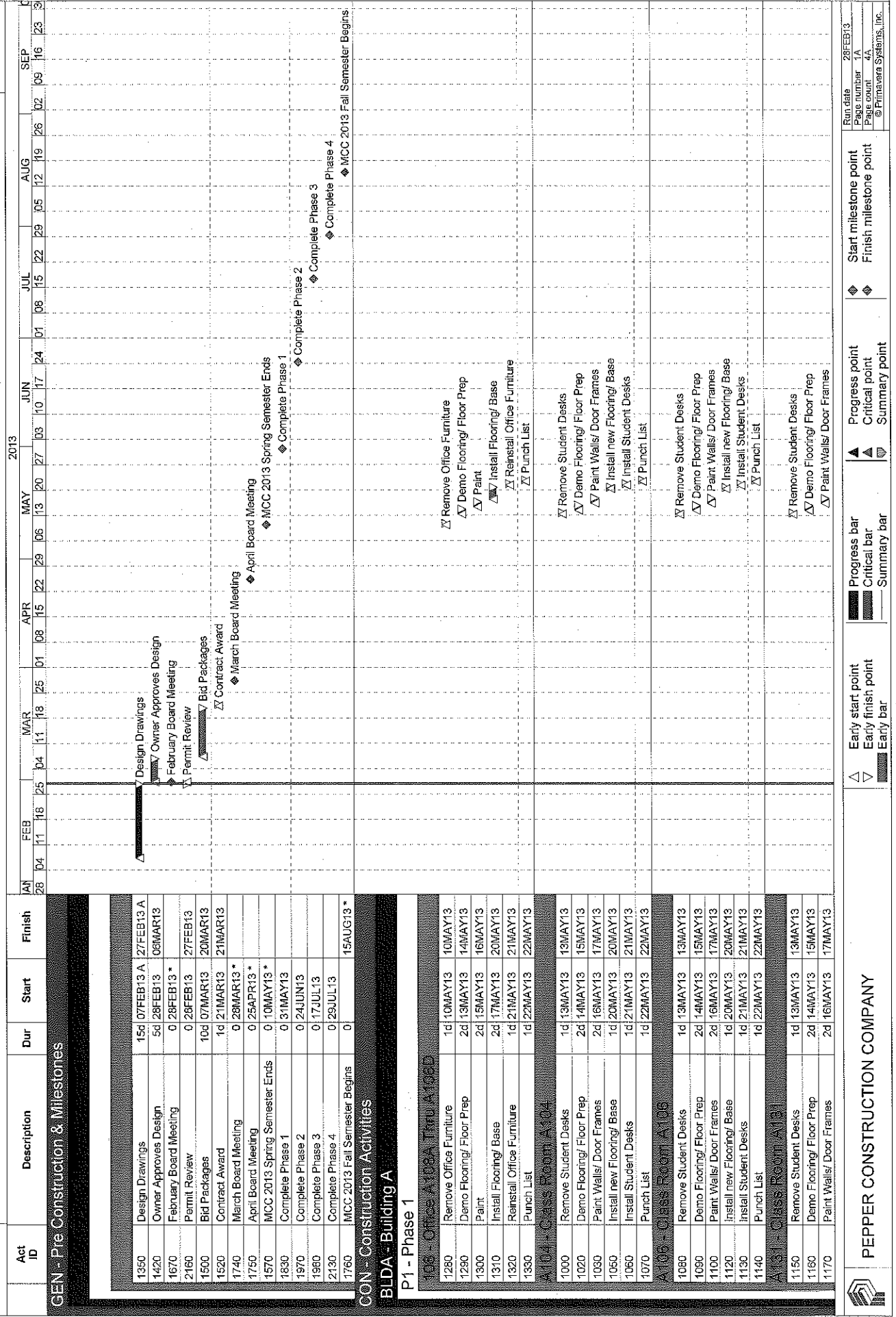
Date: \_\_\_\_\_

All rates are subject to verification and review in accordance with the terms of our contracts. Any changes in the payroll rates are to be forwarded for written reapproval. If Prime Trade Contractor has more than one classification of Labor, submit a rate sheet each one.



# **McHenry County College Classroom / Office Carpet and Paint**

## **Project Schedule**




**McHenry County College - Classroom/ Office Carpet and Paint**

Act ID	Description	Dur	Start	Finish	2013												Run date	Page number	Page count	© Primavera Systems, Inc.
					JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP							
1190	Install new Flooring/ Base	1d	20MAY13	20MAY13																
1200	Install Student Desks	1d	21MAY13	21MAY13																
1210	Punch List	1d	22MAY13	22MAY13																
LOK - Locker Room Women A107B																				
1010	Demo Flooring/ Floor Prep	2d	16MAY13	17MAY13																
1220	Paint Walls	3d	20MAY13	22MAY13																
1230	Install new Flooring/ Base	3d	23MAY13	27MAY13																
LOKM - Locker Room Men's A107C																				
1240	Demo Flooring/ Floor Prep	2d	20MAY13	21MAY13																
1250	Paint Walls	3d	23MAY13	27MAY13																
1260	Install New Flooring/ Base	3d	28MAY13	30MAY13																
P2 - Phase 2																				
A221 - Class Room A221																				
1340	Remove Desks	1d	31MAY13	31MAY13																
1360	Demo Flooring/ Floor Prep	2d	03JUN13	04JUN13																
1380	Paint Walls/ Door Frames	2d	05JUN13	06JUN13																
1390	Install new Flooring/ Base	1d	07JUN13	07JUN13																
1400	Install Student Desks	1d	10JUN13	10JUN13																
1410	Punch List	1d	11JUN13	11JUN13																
A225 - Class Room A225a																				
1430	Remove Desks	1d	31MAY13	31MAY13																
1440	Demo Flooring/ Floor Prep	2d	03JUN13	04JUN13																
1460	Paint Walls/ Door Frames	2d	05JUN13	06JUN13																
1470	Install new Flooring/ Base	1d	07JUN13	07JUN13																
1480	Install Student Desks	1d	10JUN13	10JUN13																
1490	Punch List	1d	11JUN13	11JUN13																
A372 - Class Room 372																				
1580	Remove Desks	1d	31MAY13	31MAY13																
1590	Demo Flooring/ Floor Prep	2d	03JUN13	04JUN13																
1610	Paint Walls/ Door Frames	2d	05JUN13	06JUN13																
1620	Install new Flooring/ Base	1d	07JUN13	07JUN13																
1630	Install Student Desks	1d	10JUN13	10JUN13																
1640	Punch List	1d	11JUN13	11JUN13																
BLDB - Building B																				
P2 - Phase 2																				
B170 - Conference Center B170																				
1650	Demo Flooring/ Floor Prep	1d	03JUN13	03JUN13																
1660	Install new Carpet (Center aisle)	1d	04JUN13	04JUN13																
B235 - Office B235 Includes a thru																				
1680	Remove Office Furniture	3d	03JUN13	05JUN13																
1690	Demo Flooring/ Floor Prep	2d	05JUN13	07JUN13																
1700	Paint	3d	10JUN13	12JUN13																
1710	Install Flooring/ Base	2d	13JUN13	14JUN13																
1720	Reinstall Office Furniture	4d	17JUN13	20JUN13																
1730	Punch List	1d	21JUN13	21JUN13																
BLDC - Building C																				

# McHenry County College - Classroom/ Office Carpet and Paint

Act ID	Description	Dur	Start	Finish	2013	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
<b>P3 - Phase 3</b>														
<b>C100 - FAC Office C101, 102, 103, 114, 115, 124, 126</b>														
1770	Remove Office Furniture	3d	24JUN13	26JUN13										
1780	Demo Flooring/ Floor Prep	2d	27JUN13	28JUN13										
1790	Paint	3d	01JUL13	03JUL13										
1800	Install Flooring/ Base	3d	05JUL13	08JUL13										
1810	Reinstall Office Furniture	4d	10JUL13	15JUL13										
1820	Punch List	1d	16JUL13	16JUL13										
<b>C104 - Classroom C104</b>														
1840	Remove Desks	1d	27JUN13	27JUN13										
1850	Demo Flooring/ Floor Prep	2d	28JUN13	01JUL13										
1870	Paint Walls/ Door Frames	2d	02JUL13	03JUL13										
1880	Install new Flooring/ Base	1d	05JUL13	05JUL13										
1890	Install Student Desks	1d	08JUL13	08JUL13										
1900	Punch List	1d	09JUL13	09JUL13										
<b>C122 - Office C122</b>														
1910	Remove Office Furniture	2d	28JUN13	01JUL13										
1920	Demo Flooring/ Floor Prep	2d	02JUL13	03JUL13										
1930	Paint	2d	05JUL13	06JUL13										
1940	Install Flooring/ Base	2d	09JUL13	10JUL13										
1950	Reinstall Office Furniture	2d	11JUL13	12JUL13										
1960	Punch List	1d	15JUL13	15JUL13										
<b>BLDE - Building E</b>														
<b>P3 - Phase 3</b>														
<b>E105 - Computer Class Room E105</b>														
1990	Remove Desks	1d	27JUN13	27JUN13										
2000	Demo Flooring/ Floor Prep	2d	28JUN13	01JUL13										
2020	Paint Walls/ Door Frames	2d	02JUL13	03JUL13										
2030	Install new Flooring/ Base	1d	05JUL13	05JUL13										
2040	Install Student Desks	1d	08JUL13	08JUL13										
2050	Punch List	1d	09JUL13	09JUL13										
<b>E106 - Computer Class Room E106</b>														
2060	Remove Desks	1d	26JUN13	26JUN13										
2070	Demo Flooring/ Floor Prep	2d	27JUN13	28JUN13										
2090	Paint Walls/ Door Frames	2d	01JUL13	02JUL13										
2100	Install new Flooring/ Base	1d	03JUL13	03JUL13										
2110	Install Student Desks	1d	05JUL13	05JUL13										
2120	Punch List	1d	08JUL13	08JUL13										
<b>E108 - Computer Lab</b>														
2140	Remove Desks	1d	26JUN13	26JUN13										
2150	Demo Flooring/ Floor Prep	2d	27JUN13	28JUN13										
2170	Paint Walls/ Door Frames	2d	01JUL13	02JUL13										
2180	Install new Flooring/ Base	1d	03JUL13	03JUL13										
2190	Install Student Desks	1d	05JUL13	05JUL13										
2200	Punch List	1d	08JUL13	08JUL13										
<b>P4 - Phase 4</b>														

## 2013

 <b>PEPPER CONSTRUCTION COMPANY</b>	<div> <div>△</div> <div>▽</div> </div>	<div> <div>Progress bar</div> <div>Critical bar</div> <div>Summary bar</div> </div>	<div> <div>▲</div> <div>▲</div> <div>▲</div> </div>	<div> <div>Progress point</div> <div>Critical point</div> <div>Summary point</div> </div>	<div> <div>◆</div> <div>◆</div> </div>	<div> <div>Run date</div> <div>Page number</div> <div>Page count</div> <div>© Primavera Systems, Inc.</div> </div>
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						<div> <div>Run date</div> <div>Page number</div> <div>Page count</div> <div>© Primavera Systems, Inc.</div> </div>





# **McHenry County College Classroom / Office Carpet and Paint**

## **Bid Calendar**

# March 2013

## McHenry County College Bid Calendar

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7	8	9
10	11	12	13 Pre Bid Walk Thru @ 1:30PM	14	15 RFI's Due By 3PM	16
17	18	19	20 Bids Due @ 10AM	21	22	23
24	25	26	27	28 MCC March Board Mtg.	29	30



# **McHenry County College Classroom / Office Carpet and Paint**

## **Change Order Analysis – Sample**

# Change Order Analysis

Exhibit 'C'

Date \_\_\_\_\_

Project Name McHenry County College - Classroom / Office Carpet and PaintProject Address 8900 US Hwy 14 Crystal Lake, IL 60012

Subcontractor \_\_\_\_\_ Change Order # \_\_\_\_\_

Description of Work \_\_\_\_\_  
\_\_\_\_\_**Labor** (Rates Based on Labor Rate Sheet)

Tradesmen	# Hrs	Unit	Hourly Rate	Raw Cost
_____	_____	_____	_____	-
_____	_____	_____	_____	-
_____	_____	_____	_____	-
_____	_____	_____	_____	-

Total Labor: \_\_\_\_\_ -

**Material & Equipment** (List Materials Separately)

Description	Qty	Unit	Unit Price	Raw Cost
_____	_____	_____	_____	-
_____	_____	_____	_____	-
_____	_____	_____	_____	-
_____	_____	_____	_____	-

Subtotal: \_\_\_\_\_ -

Sale Tax % = 0 Tax: \_\_\_\_\_ -

10% Markup on Material &amp; Equipment: \_\_\_\_\_ -

Total Material &amp; Equipment: \_\_\_\_\_ -

**Subcontractors** (Attach Invoices)

Subcontractor	Description of Work	Raw Cost
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Subtotal: \_\_\_\_\_ -

5% Markup on Subcontractors: \_\_\_\_\_ -

Total Subcontractors: \_\_\_\_\_ -

Total Change Order Request: \_\_\_\_\_ -



# **McHenry County College Classroom / Office Carpet and Paint**

## **Jobsite Safety Handbook**

# **JOBSITE SAFETY HANDBOOK**

This handbook has been provided to familiarize all subcontractors, their supervisors & craftspeople with the Pepper Construction safety rules, procedures and guidelines for preventing jobsite accidents and injuries.

Also be advised, that an officer of your company, has read this handbook, agreed with it's terms and conditions and it is included in the Subcontract Agreement between your company & Pepper Construction.. This commitment assures your compliance with the safety rules, procedures and guidelines outlined in this handbook, as well as all applicable Federal, State and Local regulations.

## **ADMINISTRATIVE**

### **STATUTORY REQUIREMENTS**

Each SUBCONTRACTOR is expected to be aware of and comply with Federal, State and Local safety regulations. Also, each subcontractor has agreed to hold the Owner & Pepper Construction, harmless for all claims, damages, (including legal fees) and/or penalties incurred as a result of SUBCONTRACTOR failure to comply with such regulations.

### **COMPETENT PERSON/10-HOUR OSHA TRAINING**

Accident prevention is the responsibility of each subcontractor & their employees. A **COMPETENT PERSON** must be designated in writing by the subcontractor. It is the competent person's responsibility to initiate and maintain an effective safety process at the jobsite. Each competent person shall have completed the ten-hour / OSHA Construction Safety and Health Training course. Documentation of this training must be provided and kept on file in the Pepper Construction jobsite safety files.

## **SAFETY PLANNING & PROGRAMS**

Per contractual requirements, the subcontractor must submit a pre-job/site specific safety plan. Additionally, a job start meeting with each subcontractor foreman, Pepper Construction site Superintendent and the Pepper Construction Safety Department must take place prior to any work starting.

The subcontractors **COMPETENT PERSON** must be fully aware of this plan and the procedures necessary to eliminate hazards. This plan must be reviewed with your crew, updated regularly as site conditions warrant and reflect changes in safety procedures that are necessary to maintain a safe jobsite.

Weekly tool box meetings are required of all subcontractors. Documentation of these meetings must be submitted to the Pepper Construction site Superintendent, on a weekly basis. Project meetings will include Safety as an agenda item and all subcontractor supervisors are required to attend.

## **INSPECTIONS**

Each subcontractor will perform regularly scheduled safety compliance inspections of their work, conduct weekly Tool Box safety meetings with their site personnel and submit documentation of these meetings to the Pepper Construction site Superintendent on a weekly basis.

Subcontractors are required to inspect the areas in which their employees are working and immediately report any unsatisfactory or unsafe conditions to the Pepper Construction site Superintendent.

Unsafe conditions created as a result of subcontractor operations must be corrected within contract requirements. Failure to comply will result in written notice to said subcontractors insurance carrier and corporate office. Failure to comply may warrant the removal of the subcontractors personnel or employee from the jobsite.

## **ACCIDENT REPORTING**

All accidents shall be reported to the Pepper Construction site Superintendent immediately after providing for medical treatment to the injured. This includes all second tier subcontractors. Accidents involving damage to property, public or private, general liability or injury to non-employees must also be reported

immediately. A copy of each accident report is to be provided to the Pepper Construction site Superintendent within 24 hours.

#### DRUG & ALCOHOL

All personnel on this jobsite will abide by the Pepper Construction Drug and Alcohol Policy. Each subcontractor agrees to immediately remove from the job site, any of their employees who violate this policy (including employees of their second tier subcontractors)

All illegal and unauthorized substances, drugs, look-alike drugs, synthetic drugs, alcoholic beverages and drug paraphernalia are strictly prohibited on Pepper Construction jobsites. Personnel, subcontractor employees &/or suppliers found to be using or in possession of, or concealing of any of the above items, will not be allowed on the Pepper Construction jobsite. Any employee of the subcontractor suspected to be under the influence of drugs or alcohol, will be referred to their supervisor to determine their compliance to this Drug & Alcohol Policy and further disposition of the employee. All employees, their vehicles and personal property are subject to search and inspection, upon entering or departing a Pepper Construction job site.

Pepper Construction has adopted a "Zero Tolerance" policy regarding drug or alcohol usage. Drug or alcohol use during the work shift is prohibited. (This includes breaks and lunch)

#### PERSONAL ENTERTAINMENT DEVICES

Elevated noise levels can and do create an unsafe condition so controlling unnecessary noise is critical. Therefore, electronic entertainment devices are prohibited in the job site work area. Radios are permitted in the site trailer or office, primarily to assist in identifying emergency situations (such as weather, security alerts, etc.) Devices will be confiscated and returned to their owner at the end of the work shift. Repeat violations of this policy will result in the appropriate discipline, up to and including removal from the jobsite.

#### CLOTHING

Appropriate clothing must be worn at all times. Construction safety shoes are required for any person entering a Pepper Construction job site. Loose clothing, shorts, athletic shoes or shirts

that do not cover the shoulders, are not allowed to be worn on the job site.

**Jewelry of any kind is strongly discouraged on the job site.**

The risk of becoming "caught on" or "caught in", increases substantially if necklaces, dangling jewelry or rings are worn.

#### VIOLATIONS

If unsafe conditions, practices or procedures are observed, the subcontractor supervisor will be requested to correct the situation. Failure to adequately correct the condition or refusal to comply or enforce the requirements referenced in this handbook may result in:

- a. Removal from the jobsite of involved employees.
- b. Removal from the jobsite of all subcontractor's employees.
- c. Denial of future bid opportunities with Pepper Construction.

#### CONTRABAND & FIREARMS

Contraband, stolen property, firearms, weapons, explosives and any other hazardous substances are strictly prohibited on any Pepper Construction jobsite. Persons or employees found to be using, in possession of or concealing any of the above unauthorized items will be permanently removed from the jobsite.

#### INSURANCE REQUIREMENTS

Subcontractors may not start their work until a valid & acceptable **Certificate of Insurance** is on file with Pepper Construction. This includes a copy being provided to the Pepper Construction site Superintendent. This certificate ensures protection of all those involved...primarily the employee.

#### CONFINED SPACE

Work which involves confined space entry, must be reviewed on a site specific plan. Entry is prohibited unless an Entry Supervisor and an Entry Plan is implemented. Contact the Pepper Safety Dept. for assistance.

## CRANES

Areas within the swing radius of all cranes must be barricaded, to prevent employees or other persons from being struck by or caught between the counterweight assembly. **It is strictly prohibited for personnel to ride the load or the headache ball.**

Safety latches are required on all crane hooks. Cranes may not be operated within ten feet of energized electrical transmission or power lines. A positive locking device (anti two block) must be installed & functioning, if crane is equipped with such device.

Personnel are strictly forbidden from riding on material hoisting equipment at any time!

## MATERIAL HANDLING FOR MULTI-STORY STRUCTURES

The practice of swinging or pulling a suspended load into a building by any method is strictly prohibited. This practice places employees, equipment and the structure at substantial and unnecessary risk.

This operation must be analyzed in the site-specific safety plan. The subcontractor may or may not be contractually required to hoist their own material. Proper loading systems including, but not limited to, are;

- a. Material/man hoists
- b. Platform lifts
- c. Crane/landing platform or lookout

If guardrails are removed on landing platforms, lookouts or hoists, personal fall protection must be provided for exposed employees.

Additionally, if guardrails are removed, flagging must be installed to warn of fall hazard or unprotected edge condition.

## ELECTRICAL SAFETY

### ELECTRICAL EQUIPMENT

Subcontractors are responsible for maintenance of their extension cords, electrical tools and equipment. Defective extension cords & equipment shall be removed from service immediately. OSHA requires daily inspection of extension cords, tool cords and equipment cords. This inspection must include ground plugs, insulation and exposed conductors. **All persons must use GFCI's at all times**, even if using permanent building power. An **Assured Grounding Program** is strongly recommended,

in addition to the use of GFCI's. The requirement for this program is left to the discretion of the Pepper Construction site Superintendent.

### TEMPORARY ELECTRICAL INSTALLATION

Temporary electrical power, such as receptacle and lighting wire, may not be installed on Pepper Construction sites as open conductors. Open conductors are copper conductors covered with one layer of insulating material. Temporary electrical service conductors, unless installed in metallic raceways, **must utilize flexible cords and cables which carry the trade name "HARD SERVICE" or "JUNIOR HARD SERVICE"**, as defined in the 2002 edition of the NEC/Article 400/Table 400.4. Acceptable cord designations include;

Type Letter S (& their derivatives) designated "HARD" or "EXTRA HARD" use.

### ENERGIZED SOURCES

As stated in OSHA Subpart K, guarding of energized parts must be provided. Regarding the specific guard required, either the permanent or an acceptable temporary cover must be provided. Non-conductive material is acceptable for temporary covers. Cardboard is not an acceptable temporary cover. All temporary covers must have a positive fastening device to secure it to the panel.

Magnetic temporary covers may only be used during the work shift for guarding while the personnel responsible for the open panel are required to leave the "immediate" area.

Magnetic covers may not be used overnight or if tradesmen will not be present for the next shift. It is acceptable to leave a panel open if the area that contains the panel is secured or isolated per the requirements of OSHA 1926.403 (i)(2).

## ENVIRONMENTAL

Respiratory hazards, environmental concerns and the handling of materials that may present acute or chronic health hazards must be addressed in a site specific safety plan. MSDS are to be supplied by each contractor and will be kept on file in the Pepper Field Office.



## EXCAVATIONS

At any time a subcontractor-controlled employee is involved in the creation of, or working in, any trench or excavation, that subcontractor must provide an on-site COMPETENT PERSON.

For the purposes of Subpart P, the competent person must have certification of task specific training in excavations & trenches. This documentation must be provided to the Pepper Construction site Superintendent.

Whenever an excavation or trench is required by the subcontractor, it is their responsibility to contact JULIE or DIGGER (or other "One Call Locate" service). Work may not start until these dig numbers have been submitted to the Pepper Construction site Superintendent and the schedule of excavation approved. Excavations must be barricaded in order to protect pedestrian and vehicular traffic from entering. Spoil must be piled a minimum of two (2) feet away from the edge of the excavation or trench.

The excavation must be sloped or benched per OSHA standards, shored and/or safeguarded through the use of a trench box or other engineered earth retention device(s) when excavation reaches five (5) feet or greater in depth. Protection against cave-in at a depth of less than five (5) feet may be required if the COMPETENT PERSON determines that soil or other conditions warrant such protection. Check all excavation walls before entering a trench or excavation after heavy rains and during a thaw cycle. Inspect and check shoring systems integrity, provide an adequate means of egress or access from the excavation. Stairways, ladders or ramps must be provided for this purpose, located a maximum of twenty five (25) feet apart whenever the excavation depth is four (4) feet or greater. Observe all applicable guidelines for the use of extension ladders or job-made gang ladders.

## UTILITIES

Equipment operators and truck drivers must be cautioned not to operate closer than the recommended distances from overhead or underground electrical wires. If work is required near these utilities, the SUBCONTRACTOR must consult with the Pepper Construction site Superintendent about alternative action plans.

## FALL PROTECTION

A fall protection program is designed to provide the required methods to prevent employees from exposure to or suffering an injury due to a fall from an elevation. Due to the extreme severity of fall related injuries, subcontractors must exercise every precaution required.

The use of fall protection systems and equipment is required on all Pepper Construction jobsites.

Any employee found to be in violation of Pepper Construction's Fall Protection requirements is subject to immediate removal from the jobsite.

A "Fall Protection System" is defined as some engineered, physical means or methods that are designed to eliminate a fall exposure to employees. Under OSHA 1926 Subpart M, it is required to provide "Guard Rail Systems, Safety Net Systems or Personal Fall Arrest Systems".

### General Requirement:

**Fall protection is required whenever employees are exposed to falls of six (6) feet or greater, to a lower level.**

OSHA Subpart M states that there may be work activities which qualify for an exception to the six (6) foot rule; however it continues to state, "there is a presumption that it is feasible and will not create a greater danger to implement at least one of the above referenced systems." Pepper Construction supports this presumption of feasibility and any exception must have the approval of the Pepper Construction Safety Department and site Superintendent. It has been demonstrated that effective fall protection can be provided for many concrete leading edge operations, pre-cast plank and double-T erection and many low sloped (4 in 12 or less) roofing operations. It is required that the appropriate fall protection systems be provided. This must be addressed in the Site Specific Safety Plan, each subcontractor is contractually required to provide to Pepper Construction. Specific to roofing work, any employee engaged in the installation of sheet metal materials (including but not limited to flashing, coping caps, etc.) must use an acceptable means of fall protection.

Other trade tasks unrelated to roofing work being performed on low-sloped roofs must implement a "Controlled Access Zone." This must be created with flagging or barricades, established a minimum of fifteen (15) feet from unprotected sides or edges. A flagged or barricaded path

must be established and maintained from the point of access to the controlled access zone. Any employee outside the controlled access zone must utilize an acceptable means of fall protection.

#### FLOOR OPENINGS & PERIMETER PROTECTION

Guardrails are provided at the perimeter, stairway openings and shaft openings. Smaller floor openings are to be covered and secured. This is done to provide for the safety of all personnel on the job site. If a subcontractor finds it necessary to remove a guardrail or an opening cover, an authorized Pepper Construction representative must be notified and the removal and replacement of the protective device is to be coordinated with them. This procedure is critical in assuring that these systems maintain their required protective designs. Should a subcontractor damage any protective system, they must notify an authorized Pepper Construction supervisor immediately.

#### **Do not remove or repair these systems without notifying Pepper Construction.**

Whenever rails or covers are removed, employees must be protected through the use of appropriate fall protection systems. Failure to replace protective systems, may subject the responsible employee to removal from the jobsite. Further, failure to replace protective system will result in Pepper Construction performing this work and the cost for this activity will not be negotiable, based on the SUBCONTRACT AGREEMENT, with the respective firm.

#### MASONRY FALL PROTECTION (OVERHAND OPERATIONS)

It is the policy of Pepper Construction, that when overhand bricklaying operations are used, they will be regulated by OSHA 1926, Subpart M, Fall Protection. A positive means of fall protection must be provided to all workers exposed to a six (6) foot or greater fall hazard. Therefore, the fall protection exclusion for those engaged in the act of laying brick, block and related materials, striking, brushing joints, etc. **does not apply to overhand operations.** In relation to operations included in 1926 Subpart L, Scaffolding, all regulations shall be followed.

## FIRE SAFETY

### FLAMMABLE STORAGE

Gasoline and other flammables must be stored in NFPA approved containers and the limits of quantities stored must meet local, state and/or federal regulations. Flammables must be stored in properly labeled containers. (HAZCOM requirement.)

### FIRE PROTECTION

Smoking is strictly forbidden in areas where flammables are stored or used. "NO SMOKING" signs must be posted and obeyed. Good housekeeping practices are the singularly most important element of fire protection. Combustible materials must be placed in trash receptacles and removed from the building in a timely fashion. Accumulation of trash will not be tolerated.

When portable heaters are used, make certain they are placed well away from combustible materials (both side to side and also above and below.)

When welding, cutting or using flammable materials, it is the responsibility of the subcontractor to provide adequate fire extinguishers at the work area. A fire watch shall be maintained whenever welding, cutting or spark producing operations take place. A Pepper Construction Burn Permit must be obtained prior to work start. This Burn Permit must be signed and completed by an authorized Pepper Construction representative. The Pepper Construction site Superintendent may designate an authorized person for this purpose. All guidelines contained within that burn permit must be followed.

Fire extinguishers are not to be tampered with, removed from their assigned locations (except for emergency use) or vandalized. If discharged for any reason, the fire extinguisher must be replaced or recharged immediately.

### LIQUIFIED PETROLEUM GAS (L-P GAS)

Storage of L-P Gas within buildings is strictly prohibited. L-P Gas containers, when in use, must stand on a substantially level, firm surface and secured in an upright position to prohibit falling, tipping or toppling of containers.

Heating equipment must be located at least 6 feet from L-P Gas containers and the heat directed away from the containers.

## **HAND & POWER TOOLS**

Craftsmen will not be issued defective or severely worn hand or power tools. Handles, heads, cutting edges and bodies shall be inspected daily and immediately removed from service if found defective or inoperable.

### **POWDER ACTUATED TOOLS**

Only employees who have been trained in the operation of the particular tool in use shall be allowed to operate that tool. All Personal Protective Equipment (PPE) required (including but not limited to eye protection, face protection, gloves and hearing protection) must be used during the operation of the tool. All live loads remaining in a used clip shall be discarded properly. Proper disposal could include a container of water or other closed container that does not allow accidental detonation of unused loads.

## **HAZARD COMMUNICATION**

In accordance with Pepper Construction's Hazard Communication Program, all hazardous material containers must be properly labeled. Every SUBCONTRACTOR must supply a Material Safety Data Sheet (MSDS) to the Pepper Construction site Superintendent at least seven (7) days prior to introducing a hazardous material to the jobsite.

A list of the hazardous materials used on the jobsite by the SUBCONTRACTOR, will be maintained in the SUBCONTRACTOR'S file. An additional set will be maintained in the Pepper Construction's site Superintendent's job files.

The SUBCONTRACTOR must maintain their written HAZCOM Program at the jobsite, along with the training program utilized for their employees. Revision to this program must be provided when requested by the Pepper

Construction site Superintendent or Safety Department.

The MSDS must be maintained on the job site. A copy of the Pepper Construction HAZCOM Program may be obtained from the Pepper Construction Safety Director's office located at 643 N. Orleans St., Chicago, IL 60610, upon written request.

## **HOUSEKEEPING**

Subcontractors are responsible for housekeeping procedures in their respective work areas. Clear aisles must always be maintained through the work area, to assure a means of emergency egress and the accessibility for emergency or rescue services.

Refuse and scrap material should not be allowed to accumulate, particularly when they interfere with work flow and/or create fire hazards.

Subcontractors failure to maintain their work areas as required or directed will result in Pepper Construction performing this clean up. The cost for this activity will not be negotiable, based on our SUBCONTRACT AGREEMENT with the respective firm.

Pepper Construction is committed to a clean jobsite. Regular housekeeping by each subcontractor is essential for maintaining a safe job site. Each subcontractor will keep their work areas clean and orderly.

## **INFECTION CONTROL**

Prior to work in any Healthcare facility, an ICRA (Infection Control Risk Assessment) must be performed in conjunction with the facilities Infection Control Dept. Traditionally every healthcare facility has a strict protocol in place for their program. The project team must be in complete compliance at all times with this protocol.

## **ILSM PROGRAMS**

Prior to work in any Healthcare facility, an Interim Life Safety Measures plan must be assembled. This plan sets forth specific action items that assures means of notification of emergency, emergency access & egress and provides for the maintaining of all Life Safety devices within the facility.

## LADDERS

All ladders must be used in strict accordance with the manufacturers and ANSI requirements. Whether using portable, fixed or job-made ladders, proper safety precautions must always be followed. Employees must always ascend or descend a ladder with three (3) points of contact. Ladders brought onto a Pepper Construction job site must be in good condition. Ladders must be inspected daily. Broken or damaged ladders will be removed from service immediately and destroyed.

**Metal or metal alloy ladders are not permitted on Pepper Construction jobsites.**

Extension ladders cannot be separated for use as single units. Extension or straight single ladders must be properly secured at the top and if possible, the bottom. A minimum of thirty six (36) inches is required above the top access point of an extension or straight ladder. Documentation of ladder safety training must be provided at the request of the Pepper Construction site Superintendent.

## MEDICAL FACILITIES

First Aid supplies are available in the Pepper Construction site Superintendent's trailer or job office. Emergency telephone numbers are also posted at this location. The emergency numbers will include a nearby medical facility. Every subcontractor must provide a First Aid kit in their job site office or gang box and provide at least one trained responder, qualified to administer care to injured workers.

## MOTORIZED EQUIPMENT

All motorized equipment must have a back-up alarm installed and operating. This includes skid steer equipment. All equipment must shut down their engines during the refueling process. Fire extinguisher(s) must be readily available during refueling, located within twenty five (25) feet of lateral distance. Only authorized person's, licensed and certified as required by local, state or federal mandates, shall operate machinery, equipment, tools or vehicles. A flag person must be used to direct the backing up of a vehicle in any congested or noisy area. Any flag person exposed to vehicular traffic

must be properly trained and certified for this task and must always wear a reflective vest.

## PERSONAL PROTECTIVE EQUIPMENT

Approved hard hats must be worn on the job site at all times. Subcontractors are not allowed to work without hard hats. Subcontractors are responsible for providing their employees with all necessary PPE, including hard hats. **Pepper Construction will not provide loaner hard hats to subcontractor's employees.**

Appropriate hearing protection must be utilized for the anticipated volume levels encountered. The use of some types of respirators requires a medical examination and documented fit testing. Documentation must be provided to Pepper Construction and kept on file. Review these requirements prior to issuing respirators to employees. **The use of eye protection (ANSI Z87.1 rated) is required at all times.** Additionally, face shields must be worn during the use of chop saws, partner saws or grinders.

## PRE-CAST ERECTION

Prior to erection of pre-cast panels or plank, a Pre-cast Erection Safety Plan must be completed by the project team. Immediately prior to erection beginning, an orientation meeting (mandatory attendance of all craftsmen involved in the process) will be held at the job site.

## SCAFFOLDING

Per OSHA requirements, any employee that uses, erects or dismantles a scaffolding system must be trained in this task. Subcontractor documentation of this training must be provided to Pepper Construction upon request.

The footings for scaffolding must be rigid, sound and capable of carrying the load without settlement or displacement. Unstable objects such as barrels, boxes, loose brick, concrete blocks or pieces of scrap lumber shall not be used to support scaffolding. Mudsills, base plates and leveling jacks must be used. Standard scaffolding shall have guardrails (top and mid rails) whenever the work platform is located at six (6) feet or greater above lower level.

If X-brace pivot point is greater than thirty eight (38) inches but less than forty eight (48) inches above work platform, only a mid-rail is required. If X-brace pivot point is greater than twenty (20) inches but less than thirty (30) inches above the work platform, only a top rail is required.

All other scaffolding situations require guardrails per OSHA standards. All scaffolding that is less than forty five (45) inches wide must have guardrails whenever the work platform is at forty eight (48) inches or greater above lower level. This includes Perry and Baker-type scaffolds. Toe boards are required to provide for falling object protection, unless the area below is barricaded and be considered a limited access zone.

Work platforms must be fully planked, except during the erection and dismantling process. At that time, two planks or an eighteen (18) inch wide (minimum) work platform will be provided. Planks must be scaffold grade or documentation provided substantiating that plank material to be of equal or greater strength. This includes planking used by concrete contractors. All planking of work platforms must be overlapped a minimum of twelve (12) inches or secured from movement through the use of cleats. Scaffold planks shall extend over their end supports not less than six (6) inches or more than twelve (12) inches. Planks must be inspected before each use and cracked or damaged planks must be removed from service prior to use.

An access ladder or equivalent device, to allow safe access, must be provided for all scaffolding. All diagonal bracing must be in place and secure. Braces do not take the place of mid and top rails (except as noted above.)

The scaffold system must be tied to and securely braced against the structure per the minimum requirements of the OSHA standard. If the scaffolding system is to be enclosed for wind or weather protection, it must be designed by a competent person to withstand the additional loads.

#### **SELF-PROPELLED MOBILE SCAFFOLDS**

Training, inspection procedures, maintenance and operation of self-propelled mobile scaffolds must comply with the manufacturers requirements and documentation. This documentation must be provided when requested by the Pepper Construction Safety Department or site Superintendent.

Outriggers or stabilizers must be used as required by the manufacturer, guardrails in place and access gates closed while unit is in use. Minimum safe distances from energized power lines must be maintained at all times (refer to the site specific safety plan.)

#### **MANUALLY-PROPELLED MOBILE SCAFFOLDS**

All casters must be provided with a positive locking device to prevent scaffold from rolling. Platforms will be tightly planked for their full width. The floor or work surface must be free from voids, holes or obstructions.

Guardrails must be installed at all open sides on all scaffolds, when the work platform is six (6) feet or more above the ground or floor. Scaffolds that measure forty five (45) inches or less in width must have guardrails when the work platform is four (4) feet or more above the ground or floor, when feasible. Baker and Perry-type scaffolds are included in this classification. The height of rolling scaffolds must not exceed four (4) times the shortest base dimension.

#### **TWO-POINT SUSPENSION SCAFFOLD**

The roof iron or hooks shall be of proper size, design and material. Installation must be secure and anchored properly under the supervision of a trained, competent person. Tiebacks of  $\frac{3}{4}$ " manila rope (or its equivalent), shall serve as a secondary means of anchorage installed at right angles to the face of the structure and secured to a structurally sound element of the building. All employees must be trained in the hazards associated with suspended scaffolding, as well as the controls necessary to eliminate each hazard. Fall protection systems must be used in conjunction with any suspended scaffolding.

#### **PUBLIC PROTECTION**

Construction activities attract the public. SUBCONTRACTORS must provide safety barriers, walkways, lighting, fences and any other means necessary to protect the public from possible injury as a result of the SUBCONTRACTORS work. This must be part of the site-specific safety plan.

## STEEL ERECTION

Steel erection activities are contractually required by Pepper Construction, to include 100% fall protection when fall hazard is fifteen (15) feet or greater. This includes erectors, connectors and decking installers. Pepper Construction further requires that decking be installed every two stories (or thirty (30) feet), **whichever is less**. Should constructability constraints not allow for this, the Pepper Construction Safety Department and site Superintendent must approve any variation.

## UTILITIES

The responsibility of contacting a "One Call Locate" service rests with the contractor performing the work. Notification of this call must be made to the Pepper Site Supervisor. In addition, a "Critical Dig" must have a second, independent locate performed. Sufficient advance notice must be provided to allow the opportunity to properly plan the work.

## WELDING & CUTTING

Any welding or torch cutting operations shall be performed with appropriate PPE to include goggles, helmet, flash protection & anti back flow valves. Sufficient ventilation, daily inspections of hoses, leads and gauges is critical. Tanks must be secured at all times.

**Never store or transport tanks laying down!**

## COMPRESSED GAS

All hoses, fittings and associated devices must be inspected daily. It is required that all couplings and fittings are secured with wire, pins or chain. Use only reinforced hose unless excess flow valves are utilized.



# **McHenry County College Classroom / Office Carpet and Paint**

## **Code of Conduct**



February 18, 2013

RE: McHenry County College  
8900 US Hwy 14  
Crystal Lake, IL 60012

**JOBSITE – CODE OF CONDUCT**

1. Hard hats are to be worn 100% at all times.
2. Safety glasses are to be worn 100% at all times.
3. All construction workers are to have badges when working on site as required.
4. No entry on school property without PCC being notified.
5. No interaction with students and faculty at anytime.
6. Parking in school lots or on streets will be coordinated with each school. All vehicles are to park in the area provided.
7. All garbage including food waste is to be put in the dumpster furnished by the Construction Manager.
8. No smoking on school property.
9. Anyone caught in a life-threatening situation will be asked to leave the site.
10. Emergency meeting place is at the PCC office.
11. After 911 has been contacted, PCC superintendent is to be notified next so the school parking personnel can be notified to help direct Emergency Response to the location.
12. Safety vests are to be worn if working in roads, parking lot or areas around vehicular traffic.
13. All deliveries between 7:00 AM – 8:00 AM and 2:00 PM – 3:00 PM to be coordinated with each school and PCC at least forty-eight (48) hours in advance.
14. School restrooms are not to be used. Use construction facilities.
15. No radios allowed on site.
16. Foul language is prohibited on school property.
17. Notify PCC of any disruptions to utilities or services.
18. No loud or boisterous activities proximate to school operations.
19. Notify PCC superintendent of any anticipated disruptions to school operations in a timely manner.
20. Any cut patch work needs to be coordinated through PCC.
21. Any work adjacent to school operations should be coordinated and notified if possible nuisance.





# **McHenry County College Classroom / Office Carpet and Paint**

## **Bid Period Scope Sheets**

# General Scope Conditions

## McHenry County College - Classroom / Office Carpet and Paint

Each bid package specifically includes, but is not necessarily limited to, the following general items:	
1	Prime Trade Contractor understands and will comply with the requirements of the Pepper Construction Co. (PCC) project schedule. PCC may change the start and finish dates as needed to facilitate construction of the overall project.
2	Time is of the essence. Schedule durations for each activity are intended to be complete and include any and all miscellaneous activities associated with that activity, complete and ready for subsequent work progress.
3	All overtime required to meet Project Schedule shall be included.
4	Expediting of submittals, fabrication, deliveries, etc. shall be included in order to meet the Project Schedule.
5	A reasonable amount of weather related delays shall be expected and incorporated into each Prime Trade Contractor's bid.
6	Prime Trade Contractor will agree to sign the Pepper Construction Prime Trade Agreement as provided in the construction manager's manual without modifications.
7	Within five (5) days of award, the Prime Trade Contractor shall submit all items requiring approval, including but not limited to product data, drawings, cutsheets, certifications, etc.
8	Within five (5) days of award, the Prime Trade Contractor shall submit an executed contract and compliant certificate of insurance.
9	Each Prime Trade Contractor must have full-time on-site supervision for its own work force, Prime Trade Contractor work, and for supplier deliveries.
10	Note that this is a tax exempt job.
11	Licenses, business or bond fees as required by the Authorities Having Jurisdiction (City of Libertyville/Township of Libertyville/ Lake County) shall be included in the contract price.
12	All plan review, inspection, and testing fees for your work shall be included and it is the responsibility of each Prime Trade Contractor to complete all the necessary drawings and permit application forms as required by the Authorities Having Jurisdiction (AHJ).
13	Temporary sanitation facilities will be provided.
14	Dumpsters will be provided by Pepper Construction
15	Electrical Contractor shall provide, at a minimum, OSHA required lighting levels in all areas. Each Prime Trade Contractor is responsible for any other task specific lighting if necessary for the proper performance of their work.
16	Provisions for temporary power and other utilities onsite will be made by each contractor.
17	Multiple mobilizations and multiple crews may be required for completion of the work within the scheduled time period.
18	Prime Trade Contractor understands and will comply with the requirements of the PCC Safety Plan. Prime Trade Contractors shall issue a Trade/Site Specific Project Safety Plan a minimum of five (5) working days prior to commencement of your work for review with PCC on site. Prior to entering the PCC jobsite, ALL PERSONS must attend the PCC jobsite safety orientation, including the orientation video. Prime Trade Contractor shall coordinate with PCC Site Supervisor in a timely manner for all personnel for this project. Prime Trade Contractor shall provide a competent person to oversee construction operations on a daily basis. At a minimum, the competent person must have completed the OSHA Trenching and Excavating Certification as well as the OSHA 10-hr Certification.
19	Prior to work commencement, provide Hazardous Communications and MSDS sheets for all material used on the project. Prime Trade Contractor will maintain a current log at the job site, including a copy for PCC's Site Supervisor.
20	All hoisting and scaffolding required to complete work shall be included in each Prime Trade Contractor's scope.
21	Each Prime Trade Contractor shall comply with all McHenry County and local working regulations.
22	All materials are to be delivered F.O.B. jobsite to each location as scheduled. Deliveries must be scheduled to coincide with the installation of the work, which may require multiple or partial deliveries. No long term storage is provided. Any and all staging and lay down areas are to be designated by PCC Site Supervisor.
23	All deliveries (material, equipment, etc.) shall be coordinated through PCC Site Supervisor with at least 48 hours notice prior to each delivery. Non-compliance will result in refusal of deliveries. Prime Trade Contractors shall provide all flagging and traffic control necessary for safely receiving all of their deliveries at the site. All flaggers must be certified and be able to provide proper documentation upon request.

24	All Prime Trade Contractors and any of their Prime Trade Contractor/suppliers must follow the designated traffic routes as indicated on the site logistics plan provided in the construction manager's manual, unless otherwise directed by PCC Site Supervisor.
25	All truck and equipment traffic will be restricted to the immediate construction area to avoid/minimize any damage to lawn areas. Heavy truck traffic, delivery vehicles, etc. must take special care not to damage or overload the existing pavement. All heavy traffic must be approved by the PCC Site Supervisor before entering the site.
26	Furnish shop drawings, product data samples, etc. for approval, as required.
27	In-progress as-built drawings must be maintained on-site during construction and available for PCC or Owner review.
28	As-Built drawings, operation and maintenance manuals, and attic stock are to be submitted within two (2) weeks of the completion of each Prime Trade Contractor's scope of work.
29	All street and driveway cleaning work that is required due to the completion of this work shall be included. Each Prime Trade Contractor is responsible on a daily basis to clean the mud or debris deposited on the adjacent streets as a result of their own construction operations.
30	Each Prime Trade Contractor is responsible for daily clean-up and debris removal and to place in own dumpster, including but not limited to, all break trash, lunch trash and all debris created by their work to a broom swept condition. Failure to clean up will result in one (1) faxed/emailed warning by PCC to responsible Prime Trade Contractor's office. Failure by responsible Prime Trade Contractor to clean up immediately after warning will result in PCC cleaning for responsible Prime Trade Contractor and backcharging all incurred costs to the responsible Prime Trade Contractor in violation.
31	No building service disruptions will be allowed during normal school hours. Disruption of the building services during off hours, as required for this work, must be coordinated with PCC a minimum of three (3) working days prior to the anticipated disruption. Multiple disruptions must be coordinated and combined to minimize the number of disruptions to the building. No disruptions will be allowed without the above stipulated notification and subsequent Owner approval.
32	Each Prime Trade Contractor is responsible for temporary barricades and flagmen, as necessary and as it pertains to their work, to facilitate traffic along adjacent streets during working hours and per the City/Township of Libertyville or AHJ regulations. All flaggers must be certified flaggers and be able to provide documentation as such upon request.
33	Each Prime Trade Contractor shall understand that a quality finished product is expected at all times and agrees to employ persons skilled in their craft and provide proper supervision to ensure an acceptable finished product. Any work that is rejected by PCC will be immediately repaired, replaced, etc. by the Prime Trade Contractor at no additional cost.
34	Each Prime Trade Contractor is responsible to repair any and all damage to adjacent streets, the existing buildings, landscaping, sidewalks, and property that is damaged as a result of their operations. After completion of the project PCC will review the site for any areas that require additional repair or replacement.
35	Each Prime Trade Contractor is responsible for all caulking, sealants, firestopping and firesafing associated with their scope of work. Prime Trade Contractors will be responsible for submitting product information (i.e. UL No.) for approval prior to installation.
36	Each Prime Trade Contractor shall understand that a reasonable amount of minor corrective work is included in this scope. Periodically and as the work progresses, status of the building or ongoing punchlist will be authored in addition to the punchlist for final acceptance. These shall be lists of noted deficiencies and not a means for initiating changes to the scope.
37	There shall be a pre-construction meeting held by PCC with Each Prime Trade Contractor prior to commencement of work on site. Each Prime Trade Contractor shall have in attendance its Office Project Manager and Field Superintendent/Foreman in charge of the project. The time and place of the meeting will be designated by PCC Project Manager.
38	Each Prime Trade Contractor is required to attend all weekly job meetings while performing work on site and at the request of the PCC Site Supervisor/Project Manager. Failure to attend job meeting will result in a \$250 deduct change order per occurrence.
39	All Prime Trade Contractors will submit to Pepper's site office, each day, a daily report indicating manpower and a brief description of the work that was performed on that day. Failure to comply will result in a \$250 deduct change order per occurrence.
40	Each Prime Trade Contractor shall, within two weeks of contract award, submit to PCC for approval, a schedule of values (SOV) on the AIA G703 form and broken out in detail per PCC management. No monthly progress payments will be made without having the SOV approved by PCC.

41	Each Prime Trade Contractor shall submit all documentation/paperwork associated with any allowance work directed by PCC. Detailed pricing break out of all components of the total price for said work (includes labor, material, equipment, etc.) shall be submitted to PCC.
42	Each Prime Trade Contractor shall submit a Change Order Request Log with each monthly pay application. No monthly progress payments will be made without having submitted the log.
43	If any fencing, partitions, barricades (temporary or permanent), etc. needs to be removed/relocated for any Prime Trade Contractor to perform work, Prime Trade Contractor first shall coordinate with the PCC Site Supervisor. Prime Trade Contractor shall remove/relocate and replace immediately after work is complete. If damaged while being removed or replaced, the responsible Prime Trade Contractor shall make all necessary repairs at no additional cost.
44	By submitting a bid, each Prime Trade Contractor has verified that they have visited and become familiar with the project site during the pre-bid meeting and/or in review of all the construction documents.
45	No jobsite trailers will be allowed on site.
46	Each Prime Trade Contractor represents that it has inspected the Project Site and has satisfied itself as to the condition thereof and that their bid is sufficient to cover all hazards and difficulties in connection therewith, including any conditions which may be encountered during performance of the Work or any other conditions at variance with the conditions indicated by the Contract Documents.
47	Each Prime Trade Contractor shall be responsible for the removal and restoration of any pavement, curbs, sidewalks, etc. that are damaged due to their scope of work. Restoration of disturbed areas shall be to a condition equal to or better than that which it was prior to being disturbed. Final acceptance of restored areas shall be determined by Owner/PCC.
48	Each Prime Trade Contractor shall protect all finishes in each area of their work. Any damages from not protecting finishes properly shall be the responsibility of the liable Prime Trade Contractor.
49	All warranties shall start on the date of final acceptance. Provide for and include extended warranties on all equipment and systems per the manufacturer's standard warranty duration. Final acceptance will not occur without proper operations and maintenance manuals, record and as-built drawings, owner training and other documentation as required for closeout.
50	Provide Current year labor rates as required in the CM Manual.
51	Labor rate escalation for the duration of the project must be included with your bid. Refer to the project schedule.
52	Provide all unit prices and alternates as required on the Bid Form.
53	A Certificate of Insurance must be issued to Pepper Construction Company prior to the commencement of work at the site.
54	Parking for Prime Trade Contractors will only be available in areas designated by Pepper Construction for contractor parking.
55	All Prime Trade Contractors using lifts, lulls, or other equipment to assist in their work will be required to furnish a licensed operator to operate the machinery. Operators must be able to produce proper documentation upon request.
56	All Prime Trade Contractor change order requests, claims, and proposal requests must be submitted to PCC. Change order requests (for CCD's, ASI's, etc.) and proposal requests (for PR's) are to be submitted by the due date specified by PCC. Cost received after the due date specified will be considered VOID and Prime Trade Contractor will be held responsible for approved changes as part of their base bid.
57	For field changes, time and material tickets must be signed by the Pepper Site Supervisor at the jobsite and are to be retained to verify actual hours worked, and materials and equipment used. Such tickets must be signed within twenty-four (24) hours of completing the work. The verification that the work is additional work outside of the contractual scope is subject to approval by Pepper's Project Manager. No changes will be approved without such itemization.
58	Contractor claims (RFI's, field changes, etc.) must be submitted no later than 10 days after knowledge of the item or actions requiring claim submittal. If Prime Trade Contractor fails to comply, change order requests and claims will be considered void, and Prime Trade Contractor will be held responsible for the work.

# Bid Package #01- General Trades

2/18/13

## McHenry County College - Classroom / Office Carpet and Paint

This bid specifically includes, but is not necessarily limited to the following items:	
1	Understands and will comply with the requirements of Pepper Construction Co's (PCC's) project schedule.
2	Will agree to sign the PCC Prime Trade Agreement as provided in project manual dated 2/18/13
3	All Division "0" and "1" specifications and any related documents.
4	Clean-up of all debris that is generated by this work is included. All debris must be removed from the building on a daily basis and placed into dumpsters furnished by others.
5	Dumpsters for this scope of work will be furnished by PCC.
6	Due to the phasing of these projects, multiple mobilizations will be required.
7	All layout associated with this work for bench marks provided by others.
8	All manpower required to meet project schedule durations is included in this proposal. This includes multiple crews if necessary to meet the project timelines.
9	In the base bid, include the following allowances for rough carpentry work not indicated in the contract documents: \$1,500. Note that the cost of coordination, supervision, overhead and profit for any such work shall be included in the bidders cost, as it is not included in the above-listed allowance values. All allowance work will be completed only at the direction of PCC. All allowances not expended will be returned to the Owner 100%.
10	Include one (1) man day of labor for general clean-up. This is to be used at the discretion of the PCC Field Superintendent. Any days not used at the end of the project will be credited using the labor rate sheet provided in the project manual for submission of the bid package.
11	All hoisting and scaffolding required to complete work is included.
12	All materials are to be delivered F.O.B. jobsite as scheduled. Deliveries must be scheduled to coincide with the installation of the work. No long term storage is provided.
13	Furnish shop drawings, product data and samples for approval as required within two (2) weeks of award. Field dimensions will be required for shop drawings and creating the door schedule.
14	As-Built drawings, operation and maintenance manuals and attic stock are to be submitted within two (2) weeks of the completion of this project, as indicated.
15	This contractor will receive, unload, uncrate, and distribute the materials installed under this contract.
16	Include field measurements as required for this scope of work.
17	Removal and re-install of cubicle partitions and removable wall partitions in Room B225 and Room C122A. Disconnect of electrical by others.
18	Removal and re-installation of existing locker benches as shown for installation of new flooring material.
19	Removal and re-install wall shelving, buckets, and standards. Field survey is required for this.
20	Labor to remove all desks, furniture, tables, etc. within classrooms and offices. Assume storage area is within 150 ft. of working location.
21	All marker boards and tack boards will remain in place. Painting will cut around these boards.
22	On the Bid Form, provide a base bid add for "Alternate A-1 : Provide Performance and Payment Bond

# **Bid Package #02 - Carpet/Resilient Flooring** **McHenry County College - Classroom / Office Carpet and Paint**

2/18/13

This bid specifically includes, but is not necessarily limited to the following items:	
1	Understands and will comply with the requirements of Pepper Construction Co's (PCC's) project schedule.
2	Will agree to sign the PCC Prime Trade Agreement as provided in project manual dated 2/18/13
3	All Division "0" and "1" specifications as well as Sections #035416, 096813 and any related documents.
4	Clean-up of all debris that is generated by this work is included. All debris must be removed from the building on a daily basis and placed into dumpsters furnished by others.
5	Dumpsters for this scope of work will be furnished by PCC.
6	Due to the phasing of these projects, multiple mobilizations will be required.
7	All layout associated with this work from bench marks provided by others.
8	All manpower required to meet project schedule durations is included in this proposal. This includes multiple crews if necessary to meet the project timelines.
9	In the base bid, include the following allowances for flooring work not indicated in the contract documents: \$2,000. Note that the cost of coordination, supervision, overhead and profit for any such work shall be included in the bidders cost, as it is not included in the above-listed allowance values. All allowance work will be completed only at the direction of PCC. All allowances not expended will be returned to the Owner 100%.
10	All hoisting and scaffolding required to complete work is included.
11	All materials are to be delivered F.O.B. jobsite as scheduled. Deliveries must be scheduled to coincide with the installation of the work. No long term storage is provided.
12	Furnish shop drawings, product data and samples for approval as required.
13	As-Built drawings, operation and maintenance manuals and attic stock are to be submitted within two (2) weeks of the completion of this project, as indicated.
14	Furnish and install all carpet and all associated vinyl base as indicated.
15	All required floor preparation including grinding and latexing must be included.
16	All required floor transition strips and reducer strips are included.
17	The delivery of the specified attic stock flooring must be included.
18	Any overtime required to meet the Project Schedule must be included.
19	Demolition of existing flooring is included in this contract
20	On the Bid Form, provide a base bid add for "Alternate A-1 : Provide Performance and Payment Bond

## Bid Package #03 - Painting

2/18/13

### McHenry County College - Classroom / Office Carpet and Paint

This bid specifically includes, but is not necessarily limited to the following items:	
1	Understands and will comply with the requirements of Pepper Construction Co's (PCC's) project schedule.
2	Will agree to sign the PCC Prime Trade Agreement as provided in project manual dated 2/18/13
3	All Division "0" and "1" specifications as well as Sections #099000 and any related documents.
4	Clean-up of all debris that is generated by this work is included. All debris must be removed from the building on a daily basis and placed into dumpsters furnished by others.
5	Dumpsters for this scope of work will be furnished by PCC.
6	Due to the phasing of these projects, multiple mobilizations will be required.
7	All layout associated with this work from bench marks provided by others.
8	All manpower required to meet project schedule durations is included in this proposal. This includes multiple crews if necessary to meet the project timelines.
9	In the base bid, include the following allowances for painting work not indicated in the contract documents: \$500. Note that the cost of coordination, supervision, overhead and profit for any such work shall be included in the bidders cost, as it is not included in the above-listed allowance values. All allowance work will be completed only at the direction of PCC. All allowances not expended will be returned to the Owner 100%.
10	All hoisting and scaffolding required to complete work is included.
11	All materials are to be delivered F.O.B. jobsite as scheduled. Deliveries must be scheduled to coincide with the installation of the work. No long term storage is provided.
12	Furnish shop drawings, product data and samples for approval as required.
13	As-Built drawings, operation and maintenance manuals and attic stock are to be submitted within two (2) weeks of the completion of this project, as indicated.
14	Painting of hollow metal doors, frames, window frames, and walls as indicated. Protection of all adjacent finishes effected by your work is required. Tack boards and marker boards will not be removed from walls.
15	Touch-up and repaint all doors and door frames that are affected by construction.
16	The preparation, repair, and painting of existing surfaces and walls include minor patching of existing walls, 1 prime coat and 1 finish coat of matching paint.
17	Sand, scrape and paint the existing steel doors and frames as indicated.
18	Caulking of all cracked surfaces, existing or new, prior to painting is included.
19	Furnish and install the caulking for all hollow metal door frames, borrowed lights and windows.
20	All overtime required to meet the Project Schedule must be included.
21	Bondo/Patch the hollow metal frames as indicated necessary to complete your work. (Existing hardware locations and expansion anchors).
22	Furnish and install the caulking for all hollow metal door frames, borrowed lights and windows.
23	Include miscellaneous patching of all drywall/plaster walls creating a smooth like new finish prior to painting.
24	Properly prep existing walls prior to painting; including but not limited to removal of screws, hangers, etc. and patching with proper filler material.
25	On the Bid Form, provide a base bid add for "Alternate A-1 : Provide Performance and Payment Bond

# Bid Package #04 - Electrical

2/18/13

## McHenry County College - Classroom / Office Paint and Carpet

This bid specifically includes, but is not necessarily limited to the following items:	
1	Understands and will comply with the requirements of Pepper Construction Co's (PCC's) project schedule.
2	Will agree to sign the PCC Prime Trade Agreement as provided in project manual dated 2/18/13
3	All Division "0" and "1" specifications and any related documents.
4	Clean-up of all debris that is generated by this work is included. All debris must be removed from the building on a daily basis and placed into dumpsters furnished by others.
5	Dumpsters for this scope of work will be furnished by PCC.
6	Due to the phasing of these projects, multiple mobilizations will be required.
7	All layout associated with this work from bench marks provided by others.
8	All manpower required to meet project schedule durations is included in this proposal. This includes multiple crews if necessary to meet the project timelines.
9	In the base bid, include the following allowances for electrical work not indicated in the contract documents: \$1,000. Note that the cost of coordination, supervision, overhead and profit for any such work shall be included in the bidders cost, as it is not included in the above-listed allowance values. All allowance work will be completed only at the direction of PCC. All allowances not expended will be returned to the Owner 100%.
10	All hoisting and scaffolding required to complete work is included.
11	All materials are to be delivered F.O.B. jobsite to each location as scheduled. Deliveries must be scheduled to coincide with the installation of the work. No long term storage is provided.
12	Furnish shop drawings, product data and samples for approval as required.
13	In-progress as-built drawings must be maintained on-site during construction.
14	As-Built drawings, operation and maintenance manuals and attic stock are to be submitted within two (2) weeks of the completion of this project, as indicated.
15	Disconnection of all live circuits prior to demolition work.
16	Not used
17	All electrical work indicated on the architectural drawings is included.
18	All overtime required to meet the construction schedule must be included.
19	All temporary power and light wiring must be hard usage wire as identified in the N.E.C.
20	Disconnect and re-connect electric at cubicle partitions and removable wall partitions in Room B225 and Room C122A.
21	On the Bid Form, provide a base bid add for "Alternate A-1 : Provide Performance and Payment Bond





**McHenry County College  
Classroom / Office Carpet and Paint**

**Tax Exempt Letter**



## Illinois Department of Revenue

Office of Local Government Services  
Sales Tax Exemption Section, 3-520  
101 W. Jefferson Street  
Springfield, IL 62702  
217 782-8881

January 2, 2010

MCHENRY COUNTY COLLEGE DISTRICT 528  
BUSINESS SERVICES  
8900 US HWY 14  
CRYSTAL LAKE IL 60012-2761

Effective January 1, 2010, we have renewed your governmental exemption from payment of the Retailers' Occupation Tax, the Service Occupation Tax (both state and local), the Use Tax, and the Service Use Tax, as required by Illinois law.

We have issued the following new tax exemption identification number:

E9995-0332-06  
to  
MCHENRY COUNTY COLLEGE DISTRICT 528  
of  
CRYSTAL LAKE, IL

The terms and conditions governing use of your exemption number remain unchanged.

Office of Local Government Services  
Illinois Department of Revenue



**McHenry County College  
Classroom / Office Carpet and Paint**

**Bid Withdrawal / Exculpatory Clause /  
Resolution of Bid Disputes Documentation**

## **Addendum or Insert as part of Instructions to Bidders**

### **I. Withdrawal of Bid - Bid Mistake - Bid Disputes**

1.1. **Withdrawal of Bid.** A bidder may not withdraw its bid before the expiration of sixty (60) days, after the date of the opening of bids. A bidder may request to withdraw its bid only in writing and in advance of (before) the bid opening or in the case of a claim of bid mistake before an actual award as provided herein.

1.2 **Request for Relief due to Error in Bid.** Where a bidder claims to have made a mistake, such mistake must be called to the attention of the Owner within twenty four (24) hours after the opening of bids. Within forty eight (48) hours of the bid opening, bidder shall submit to Owner *original* documentary evidence to the Owner's designated contracting officer with a detailed written explanation of how the mistake was made. Failure to conform with this requirement precludes the bidder from withdrawing its bid based upon a bid mistake. If such notice, proof and explanations have been tendered, and the contracting officer is convinced that a bona fide mistake has been made, the **contracting officer** may recommend to the **Board of Trustees** that the bidder be allowed to withdraw its bid and recommend that the bid be awarded to the next lowest, responsible, and responsive bidder. If the **Board** determines by majority vote, that the bidder has made a *bona fide* error, no award will be made upon such bid and the bid security will be returned. If the Board determines by majority vote that no mistake has been made, bidder may seek the recourse contained herein.

### **2. Exculpatory Clause**

2.1. Each bidder by submitting its bid acknowledges that references provided by bidder will be called by the Owner's representatives and inquiries made as to the quality, timeliness, responsiveness and the responsibility of the bidder. Further bidder acknowledges that Owner and Owner's representatives will contact others to further perform a due diligence inquiry to verify the quality, timeliness, responsiveness and responsibility of the bidder. Such due diligence inquiries will form one of the bases for awarding or rejecting the bidder's bid.

2.2. By submitting a bid, each bidder agrees to waive any and all claims it has or may have against the Owner, the Architect/Engineer, the Construction Manager and their respective employees and consultants, and those third parties contacted by any of them arising out of or in connection with the good faith evaluation of the bidder's work, quality, timeliness, responsiveness and responsibility for its actions or recommendation of the award or rejection of any bid; waiver of any immaterial variances in any requirements under the Bid Documents or the Contract Document; acceptance or rejection of any bids; and award of the Contract. A bidder's sole and exclusive recourse for the rejection of its bid and for the recommendation made by the Architect/Engineer, Construction Manager or Owner and their respective employees and consultants is through the Bid Dispute process contained herein.

### **3. Resolution of Bid Disputes**

**3.1 Final and Binding Arbitration.** By submitting a bid and by executing the bid submittal form, and in consideration of the Owner's review and evaluation of such bid, each bidder agrees to submit to final and binding arbitration any and all claims it has or may have against the Owner, the Architect/Engineer, Construction Manager and their respective employees and agents arising out of or in connection with the administration, evaluation, recommendation to award or reject any bid or the award or rejection of any bid. The parties agree that no condition precedents, such as mediation, apply to challenges to the award of a contract as provided herein.

**3.2 Demand for Arbitration within 48 Hours.** Only an unsuccessful second low bidder or the successful low bidder must serve on the Owner a written demand for arbitration within forty-eight (48) hours of the award of the contract or waive any challenge to the award or rejection of the award. The demand for Arbitration shall set forth with specificity the factual and legal basis of the challenge to the rejection or award of the bid. Within forty-eight (48) hours of receipt of the demand for arbitration the Owner shall respond in writing answering the factual and legal basis for the award.

**3.3 Discovery.** Either party may request and shall promptly receive documentation from the other party pertaining to bid submittal preparation documents, the basis of the award or rejection of the bid. Upon motion or at the arbitrator's discretion, sanctions may be awarded in an amount up to the amount in controversy for failing to comply with the mandatory disclosure obligations or engaging in dilatory or unethical practices.

**3.4 Selection of Arbitrator.** The parties shall promptly select an Arbitrator from the membership of the Society of Illinois Construction Attorneys ([www.soica.org](http://www.soica.org)), the American College of Construction Lawyers ([www.accl.org](http://www.accl.org)) or such other arbitrator the parties expressly agree upon and promptly set a date for hearing on the challenge to the bid award or rejection. If the parties are unable to promptly agree on an Arbitrator, either party may initiate a claim before the American Arbitration Association or JAMS. An Arbitrator shall be selected by a Case Manager Fast Track Procedure basis. Proceedings shall be had in accordance with the American Arbitration Association Construction Industry Arbitration Fast Track Rules or JAMS Engineering and Construction Arbitration Rules and Procedures for Expedited Arbitration then in effect to the extent consistent with the provisions herein.

**3.5 Expedited Process.** A hearing shall be set as expeditiously as appropriate to allow a fair hearing and prompt disposition of the dispute without delay in issuance of a Notice to Proceed and the commencement of the Project. The hearing if required shall take place within ten calendar days of the appointment of the arbitrator. A refusal of the petitioner to agree to schedule a date for hearing within 10 calendar days of the selection of the arbitrator or alternatively the arbitrator's first available date if required, shall constitute a waiver of any and all claims.

3.6 **Venue.** The arbitration shall take place at McHenry County College, Crystal Lake, Illinois or such other venue as the parties may agree.

3.7 **Expenses of Arbitration.** All expenses pertaining to the Arbitration of the award or rejection of the bid shall be shared equally between the participants to the Arbitration.

3.8 **Exclusive Remedies.** A bidder's sole remedies against the Owner, Architect/Engineer, or Construction Manager are (1) award of the contract (2) or rejection of the contract, and/or (3) expenses incurred preparing the bid, provided contemporaneously prepared, quantifiable, detailed and demonstrable logs of time and expense incurred in preparing and submitting the bid are presented as evidence.

3.9 **Final and Binding.** The decision of the arbitrator shall be final and binding and enforceable and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. The award shall be rendered not later than five (5) calendar days from the date of the closing of the hearing.

3.10 **Confidentiality.** To the extent permitted by law, all disputes and resolutions of the disputes between the parties shall be confidential. Neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder except as required by law.

**Note:** Add to the Bid Submittal Form:

**"Bidder by executing and submitting this bid submittal form, bidder expressly represents and warrants to Owner as follows: (a) the Bidder has read and understands the Bid Documents and the Contract Documents; (b) Bidder agrees to the expedited dispute resolution process contained in the Instructions to Bidders, and are incorporated by reference herein; and (c) the bid is made in accordance with the Bid Documents."**

[Note further, without this adding this language, submittal to final and binding arbitration is likely to not be enforceable.]

F:\McHenry College\Culinary Center Rehabilitation Project\ADR Clause for Bid Disputes 2011 12 23.wpd



**McHenry County College  
Classroom / Office Carpet and Paint**

**Prime Trade Agreement – Sample  
General Conditions**

# PRIME TRADE CONTRACT FOR PUBLIC WORK

This Contract is entered into this day of , between the Owner through its Construction Manager as its Constructor:

<b>McHenry County College</b> Phone: 000-000-0000 Fax: 000-000-0000 Attn:	<b>PEPPER CONSTRUCTION COMPANY</b> <b>Construction Manager and Constructor ("Pepper")</b> Phone: Fax: Attn:
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And  
**PRIME TRADE CONTRACTOR ("Contractor")**

as Contract No.:

Attn:  
Phone: Fax:

for Work at:

**Project Name: McHenry County College Office / Classroom Carpet and Paint**      **Location: Crystal Lake, IL 60012**

And Agree as follows:

The Contractor shall furnish all labor, material, equipment, supervision and insurance as required to provide and fully complete all work ("Work") for the above-referenced Project in strict accordance with the Contract Documents as further described in Appendix A. This Work is to be performed , including all applicable taxes,, including all applicable taxes, of Dollars (\$ ). See Paragraph 15, Enumeration of Contract Documents, for critical Exhibits and to determine if the Project is exempt from Retail Sales Tax.

**AN UP-TO-DATE CERTIFICATE OF INSURANCE MUST BE ON FILE WITH PEPPER'S SITE SUPERVISOR AT THE JOBSITE PRIOR TO BEGINNING WORK ON THIS PROJECT. PLEASE SEE ARTICLE 11 FOR FURTHER INSTRUCTIONS. CONTRACTOR'S START WORK DATE ON THE JOBSITE IS . SEE PARAGRAPH 1.3 AND 1.4 BELOW.**

**CONTRACTOR SHALL SUBMIT INVOICES BY THE \_ OF EACH MONTH. SEE PARAGRAPH 9.2, BILLING PROCEDURES. BILLING, BONDING AND INSURANCE DETAILS:**

Contract Dollar Value: Subject to retainage of % * (See Owner/Construction Manager Agreement or RFB for specific Retainage items)	Job No. Trade Item Vendor #	Phase No. Cost Code No.	CGL INSURANCE (Par 11.1.3)  Payment and Performance Bonds Required?(N)- If yes, Premium is included in Contract Price.
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**EXECUTION OF THIS FIRST PAGE OF THE AGREEMENT INDICATES THAT CONTRACTOR HAS READ AND UNDERSTANDS THE TERMS AND OBLIGATIONS OF THIS AGREEMENT AND THE ATTACHMENTS MADE A PART HEREOF THAT FOLLOW; EXECUTION IS REQUIRED BEFORE BEGINNING WORK ON THE JOBSITE.**

**PEPPER CONSTRUCTION COMPANY AS THE  
CONSTRUCTION MANAGER AND CONSTRUCTOR TO  
MCHENRY COUNTY COLLEGE**

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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

Original: Project Manager File / Supplier

cc: Jobsite / Project Accountant / Follow-Up File



## PRIME TRADE CONTRACTOR OBLIGATIONS

By executing and returning the attached acceptance copy of this Agreement, or if the acceptance copy is not executed and returned, by partial or complete performance under this Agreement, Prime Trade Contractor ("Contractor" or "Trade Contractor") agrees with Owner as follows:

### 1 General Terms

- 1.1 Project. The Project is generally described as World Headquarters.
- 1.2 Contract Documents. This Agreement includes: this Prime Trade Contract Agreement ("Agreement" or "Contract") and its attachments listed in Paragraph 15, below, any Project Labor Agreement for the Project to which Contractor is a party, and the Agreement between Owner and Pepper to the extent such terms and conditions pertain to the performance of Contractor's Work and other obligations necessary to fully complete such Work.
- 1.3 Date of Commencement. The Date of Commencement of the Contractor's Work on the jobsite shall be \_\_\_\_\_. If such date is not specified, the Date of Commencement shall be the date of this Agreement, the date of the Letter of Intent or the date of the Notice to Proceed, whichever has occurred first. The Contractor shall act promptly in procuring and preparing necessary shop drawings, submittals, permits and licenses, as further described in Paragraph 4, below, so as to not delay its date of Commencement of the Work. The Contractor is also to perform its Work in accordance with the Schedule as described in Paragraphs 3.1 and 3.2.
- 1.4 Trade Contract Time. The Trade Contract Work shall be substantially completed on or before \_\_\_\_\_, subject to adjustments as provided for in the Contract Documents. If a Commencement Date is not stated above, the Work shall be substantially complete not later than \_\_\_\_\_ (\_\_\_\_ 14) calendar days after commencement of its work on the jobsite, subject to adjustments provided by the Contract Documents. The Contractor is also to perform its Work in accordance with the Schedule as described in Paragraphs 3.1 and 3.2.

### 2. Parties to the Contract

- 2.1.1 Relationship of the Parties. Owner has selected Contractor to perform its Work pursuant to applicable public bidding laws. The Owner has directed Pepper to enter into this Agreement with the Contractor and has delegated full authority to Pepper, as the Construction Manager and representative of the Owner for this Project, to perform all of Owner's obligations and to exercise all of Owner's rights and powers under the terms of this Agreement.
- 2.2 Key Personnel and Communications. Contractor hereby agrees that key personnel assigned to the Project shall remain for the duration of this Work; reassignment or removal of said key personnel will require Pepper's approval. Pepper and Contractor shall each designate one or more persons who shall be their authorized representative(s). Such authorized representatives shall be the only person(s) the Contractor shall look to for instructions and orders, and the only person to whom Owner/Pepper shall issue instructions or orders, except in the case of an emergency. The Contractor shall also designate its Project Foreman at the job site as its Safety Representative.

Pepper's Representative:  
LUCAS, BRIAN  
411 Lake Zurich Road  
Barrington, IL 40010  
Phone: 847-381-2760  
Fax: 847-304-6510

Contractor's Office Representative:  
  
Phone:  
Fax:

Contractor's Safety Representative:  
  
Phone:  
Fax:

Provide address and phone number for each if different from that shown at Page 1, above.

- 2.3 Assignments. Contractor shall not assign this Agreement, or portions thereof, without the prior written permission of Owner and Pepper. Contractor shall not sell or assign receivables acquired pursuant to this Agreement to any financial institution or third party; to do so is a material breach of this Agreement.
- 2.4 Amendments. Once executed, this Agreement may only be amended in writing.
- 2.5 Notices.
- 2.5.1 In performing the Work, Contractor shall give timely and proper notice as required by any federal, state and local authorities, with a copy to Pepper.
- 2.5.2 Written notice shall be deemed to have been duly served if delivered to the last business address known to the parties stated above in this Contract using one of the following methods:
- 2.5.2.1 in person to the individual or a member of the company or to an officer of the corporation for which it is intended;
- 2.5.2.2 by registered or certified mail;

- 2.5.2.3 by facsimile, with a hard copy to follow via U.S. Mail; or
- 2.5.2.4 by a private delivery service with tracking methods to confirm delivery.

### **3. Contract Time**

- 3.1 Time. **TIME IS OF THE ESSENCE OF THIS CONTRACT!** Contractor shall supply a sufficient number of competent workers and shall cooperate with Pepper and other Prime Trade Contractors in the scheduling and performance of its Work. Contractor shall commence its Work upon notification from Pepper and will proceed toward completion in accordance with the Master Project Schedule ("Schedule") as described in Exhibit 3.2, as established by Pepper, which may be adjusted from time to time to allow for proper coordination of all Trades' Work. Should Contractor fail to pursue or complete its Work in accordance with the Schedule, it hereby agrees to indemnify Owner and Pepper for any loss or damages caused by such delay.
- 3.2 Schedule. Contractor is obligated to perform Work in accordance with the Schedule, as set forth at **Exhibit 3.2**, as follows:
  - 3.2.1 Contractor is required to prepare its detailed Schedule ("Detail Schedule") within the scope of the preliminary Master Schedule, so as not to impede the stated Project completion time.
  - 3.2.2 Contractor's assistance and input, with detailed breakdown of Work items and duration for each, is required to develop an agreeable and accurate final Schedule. Contractor shall submit a statement outlining Start Date(s), a Completion Date and estimated times for delivery of the major components of its Work. Detail Schedules shall be in the form of a bar chart and indicate durations in weeks. The Detail Schedule shall indicate, in detail, the status and progress of Shop Drawings and submittals, fabrications, delivery and installation Start/Complete dates for various stages of Work. Contractor shall provide a Detail Schedule five (5) working days after being awarded the Work.
  - 3.2.3 It is expressly understood that scheduling requirements may require temporary omissions and out of sequence Work as reasonably designated by Pepper's Superintendent. All "come back" Work required for this or other out of sequence Work, including re-mobilization, shall be completed on a timely basis at no additional cost to Owner/Pepper.
- 3.3 Progress Meetings.
  - 3.3.1 Contractor shall designate a single representative assigned to the Project who will be responsible for attending meetings, monitoring schedules and coordinating all activities. Contractor's Representative shall have the authority to commit the Contractor to solutions and/or actions as agreed upon in these meetings.
  - 3.3.2 Regularly scheduled Progress Meetings shall be held weekly, unless otherwise scheduled. It will be the responsibility of each Contractor to attend these meetings to determine the status of the Project and to report on the status of its Work.
- 3.4 Coordination. Contractor shall cooperate and coordinate its Work with all other Prime Trade Contractors and furnish them all details and information required for proper coordination of the Work. Contractor shall cooperate in scheduling activities in order that the Work of all parties can be completed on a timely basis, and shall immediately advise Pepper of any interferences with its Work.
- 3.5 Excusable Delays. Extensions of time for delays not caused by the Contractor or not within the Contractor's control shall be strictly governed by the terms of the Contract Documents. Contractor must give Pepper notice of any potential delay within three (3) calendar days, or as otherwise stipulated within the Contract Documents, after such occurrence with an estimate of the additional time needed to overcome the delay. In no event will Contractor be entitled to any consideration for delays if it has concurrently delayed its own Work. If Contractor fails to give Pepper written notice of the excusable delay, the potential claim shall be deemed waived. The Contract Documents shall exclusively govern the Contractor's right to an increase in Contract Price or extension of time because of any excusable delay.
- 3.6 Overtime. When ordered in writing by Pepper, Contractor shall perform base Contract Work under this Agreement during overtime hours. In the event overtime work is required because of Contractor's own delays to the Project Schedule, e.g., insufficient manpower or submitting Shop Drawings and other submittals too late for approval per the Project Schedule, no additional compensation will be granted. In the event overtime is required because of delays of others, Contractor shall only be compensated for the net increased labor costs.

### **4. Contractor's Responsibilities**

- 4.1 Prime Trade Contractor. The Contractor, as an independent contractor, shall perform its obligations under this Contract using its best skill, care and diligence in the supervision and performance its Work according to the Contract Documents. Consistent with the Project Safety Requirements, as set forth at Appendix C, the Contractor shall have complete responsibility and control over the performance of the Trade Contract Work, including construction means, methods, techniques, sequences and procedures for coordinating and completing its obligations under this Agreement.
- 4.2 Permits, Licenses and Prevailing Wage Act. In performing the Work, Contractor shall comply with all applicable laws and ordinances, including use of the most current statutory prevailing wage rates in effect for the location of the Project, and secure and pay for all necessary permits, licenses, inspections, tests and bonds required for the Work performed under this Contract. The general building permit will be obtained and paid for by others.
- 4.3 Examination of Site. Contractor warrants that it has visited and visually examined the Project site and general and local conditions which could affect its Work. Contractor shall make no claim for extra Work on account of existing exposed site conditions or

conditions of which it knew, or in the exercise of reasonable skill as a first class contractor for this classification of Work, should have known.

- 4.4 Incomplete Details. The Work to be performed by the Contractor includes that Work specifically set forth in this Agreement, as well as any and all other work reasonably inferable from the work indicated by the Contract Documents. The Contractor shall take all field measurements necessary to perform its Work. Neither the Owner nor Pepper makes warranty, expressed or implied, as to the sufficiency of the Construction Documents furnished by the Owner. The Contractor shall furnish all required samples and Shop Drawings in order to insure that the Contractor's Scope of Work is complete in every detail and free from any gaps, duplications, or omissions.
- 4.5 Layout and Engineering. All Prime Trade Contractors will perform layout and engineering, as required to complete the Work within the scope of their respective Agreements, from vertical and horizontal principal control lines and grades established by Pepper.
- 4.6 Shop Drawings and Submittals. Contractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Pepper or other Prime Trade Contractors. Contractor shall be responsible to Owner/Pepper for the accuracy and conformity of its submittals to the Contract Documents. The review and/or approval of any Contractor submittal shall not be deemed to authorize deviations, substitutions or changes in the Contract Document requirements unless express written approval is obtained from Owner/Pepper, specifically authorizing such deviation, substitution or change.
- 4.7 Daily Reports. Each Contractor will submit a daily report to Pepper's Superintendent for each day Contractor is working on the Project. The daily report should state:
- 4 The number of tradesmen that worked;
  - 5 The positions of those tradesmen;
  - 6 The number of hours each tradesmen worked;
  - 7 The specific hours each tradesman worked;
  - 8 The shift worked by each tradesmen: 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup>;
  - 9 A brief description of the day's activities;
  - 10 A two-day look ahead for scheduling purposes;
  - 11 Any inspections, problems or otherwise pertinent information; and
  - 12 Accidents that occurred during the day, if any
- 12.8 Material Delivery. Material delivery to the jobsite shall be handled in accordance with the following:
- 4.8.1 Cost of all shipping of materials, freight to the jobsite and insurance of same to be the responsibility of the Contractor.
- 4.8.2 Contractor must notify Pepper's on-site Superintendent forty-eight (48) hours prior to delivering any materials. Copies of the delivery ticket will be stamped, showing the actual time and date shipment was received.
- 4.8.3 Each shipment of material shall contain a packing slip with the correct nomenclature of contents; the box or carton containing this information must be so marked. At the time of shipment, one (1) copy of said packing slip shall be forwarded to the destination of shipment to alert Pepper's Superintendent as to what material is in transit so that arrangements can be made at least forty-eight (48) hours in advance to receive, allocate and store said material.
- 4.8.4 If Contractor fails to adhere to the foregoing notification and other requirements, Pepper reserves the right to refuse, warehouse, or return to the carrier the shipment in question. All related costs incurred by Pepper, i.e. handling, storage, protection, etc., will be borne by Contractor.
- 4.9 Hoisting and Scaffolding. Contractor agrees to be solely responsible for all hoisting of materials and all scaffolding necessary for the performance of its own Work unless otherwise stated. Unless expressly provided for in Contractor's Scope of Work, no provisions for hoisting or scaffolding will be provided by Pepper. Any scaffolding or hoisting equipment used by Contractor must conform to all local code requirements including, but not necessarily limited to, those of state and federal OSHA. All cranes employed by Contractor shall have maintenance logs current as of the date on the jobsite. All logs shall be readily available for review by Pepper upon request.
- 4.10 Dewatering. Contractors who are performing excavation, trenching, utility and/or concrete work are responsible for keeping their excavations free of water during construction.
- 4.11 Cutting and Patching. Contractor shall perform cutting, patching, fire safing and caulking, as required to complete the Work within the Scope of its respective Contract.
- 4.12 Testing. Contractor will be responsible for costs of retesting and correcting or replacing Work that fails the Owner/Pepper's testing or that of local authorities, as well as all costs incurred by other Trades whose Work is delayed or damaged due to the failure of Contractor's Work to meet inspection and test requirements.
- 4.13 Environmental Compliance. Contractor agrees to comply with pollution and environmental protection regulations for the use of water and other services. Contractor further agrees to discharge waste and storm water drainage from the Project site and to comply with any "Environmental Impact" commitments that may have been made by the Owner in securing approval to proceed with construction of this Project. All waste materials and substances (e.g., solvents, cleaners, waste oils, etc.) shall be handled and/or disposed by Contractor in full compliance with all applicable federal, state and local statutes, regulations, ordinances and rules.

- 4.14 Cleanup. Contractor must provide cleanup and disposal of debris resulting from its Work on a daily basis in order to keep the Project clean, orderly and hazard free. Material will be placed in dumpsters provided by Pepper. Location of dumpsters will be at Pepper's discretion.
- Upon completion of Work and prior to leaving the site, Contractor must receive approval and acceptance by Pepper that all final cleanup requirements have been met and that the area is ready for final inspection. When directed in writing in the field by Pepper's Superintendent, Contractor agrees to cleanup all debris attributable to its Work within twenty-four (24) hours notice for any given work area, or accept the appropriate backcharges for cleanup performed by Pepper or other contractors which will be billed to Contractor on a monthly basis no later than the following month in which the charges are incurred.
- 4.15 Protection of Work. Contractor shall take reasonable precautions for safety of and shall provide reasonable protection to prevent damage, injury, or loss to:
- 4.15.1 employees on the jobsite and other persons who may be affected;
- 4.15.2 the Work, materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor or Subcontractors; and
- 4.15.3 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.
- Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property as described above caused in whole or in part by the Contractor or its 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, except damage or loss attributable to acts or omissions of the Owner, Architect, Pepper or anyone directly or indirectly employed by them, or by anyone for whose acts they may be liable and not attributable to the fault or negligence of the Contractor.
- 4.16 Punch List. Contractor will give written notification upon completion of the punch list.
- 4.17 As-Built Documents & Operations Manuals. Contractor is required to maintain an up-to-date set of As-Built Drawings at all times. At the completion of Contractor's Work, Contractor will provide to Pepper the number of copies of As-Built Drawings that are required per the Contract Documents and one (1) additional copy for Pepper's use. Contractor shall provide copies of Owner's Operational/Instructional/Maintenance Manuals and training materials as required by the Project Specifications.
- 4.18 Payment and Performance Bonds. If required by the Request for Bid, Contractor shall furnish to Owner, within 0 days after selection of Contractor as the lowest responsive and responsible bidder, and maintain throughout the Project, a 100% Payment and Performance Bond from a surety company acceptable to Owner. The Payment Bond shall include, among other things, a provision that will guarantee the faithful performance of the prevailing wage clause, as set forth at Paragraph 9.1, below, and pursuant to applicable laws.
- 4.19 Indemnity Bonds. Consistent with applicable law, in the event that Owner receives a notice or claim of non-payment from a Subcontractor or material supplier under contract with the Contractor, Owner shall have the right to require the Contractor to bond over the claim in an amount equal to One Hundred Fifty percent (150%) of its amount. Should Contractor not be justified in refusing to pay the claim, after three (3) days' written notice to Contractor, Owner shall have the right to pay a sum sufficient to discharge such claim or obligation and charge the same against any amount owed Contractor. Pepper shall also have the right to require Contractor to furnish and pay for an indemnity bond in an amount not less than One Hundred Fifty percent (150%) of (a) the sum of any final lien waivers the Contractor fails to provide or (b) the amount of any unjustified claims. Provided payment is made for Work properly performed, Contractor agrees to defend, hold harmless and indemnify Owner and Pepper against all loss, damages, judgments and expenses (including attorneys' fees), which Owner or Pepper may sustain in connection with any claim.
- 4.20 Taxes. The Owner is not subject to the payment of Retailer's Occupational Tax or any other state sales or use tax. Such exemption, however, does not apply to tools, machinery, equipment or other property leased by the Contractor, or to supplies and materials that, even though consumed, are not incorporated into the completed Project. The Contractor shall be responsible for and pay all applicable taxes, including sales and use taxes, on such leased tools, machinery, equipment or other property, and upon unincorporated supplies and materials. Tax Exempt Letter attached in **Exhibit 4.20**.
- 4.21 Price Escalation. This Agreement includes any and all price escalation throughout the duration of the Project.
- 4.22 Laws. This Agreement shall be governed by the law of the Project location. Laws include, but are not limited to, laws, ordinances, regulations, rules and orders of public authorities. The Contractor agrees to be bound by, and at its own cost, comply with all federal, state and local laws applicable to the Trade Contract Work, including, but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, and all others required by the Contract Documents or as may be set forth in the Request for Bid. The Contractor shall be liable to Owner/Pepper for all loss, cost and expense attributable to any failure of the Contractor, its employees, agents, and Subcontractors to comply with such laws, including, but not limited to, fines, penalties or corrective measures.
- 4.23 Performance. Pepper's failure to require strict performance of any provision of this Agreement shall not constitute a waiver of its right to require strict performance in the future.

## 5. Scope of Work

The Scope of Contractor's Work is set forth at **Appendix A**. This exhibit indicates:

- A) the services, labor and materials indicated in or reasonably inferable from the Contract Documents enumerated in Appendix A and this Contract that Contractor shall provide as its "Scope of Work";
- B) those items, if any, that are specifically excluded; and
- C) Unit Prices, if any.

## 6. Subcontractors

- 6.1 Subcontracts. Contractor agrees not to subcontract more than five percent (5%) of this Contract without the prior written consent of Pepper. For all proposed Subcontracts in excess of five percent (5%), Contractor shall furnish to Pepper an AIA Document A-305 or equal Contractor's Qualification Statement, not less than five (5) working days prior to final execution of any Subcontract. In accordance with the Contract Documents as defined in Article 1, above, Contractor agrees it shall not contract with any such proposed person or entity to which the Owner, Pepper or the Architect has a reasonable objection.

Contractor agrees that any part of Work performed for the Contractor by an approved Subcontractor shall be pursuant to a written Subcontract between the Contractor and each Subcontractor. Said written Subcontract shall contain provisions that:

- 6.1.1 Require the Work be performed in accordance with the requirements of these Contract Documents;
  - 6.1.2 Require the Subcontractor to carry and maintain liability insurance coverage in accordance with these Contract Documents;
  - 6.1.3 Require the Subcontractor to agree to the Construction Schedule as outlined and/or detailed in Paragraph 3.2, above; and
  - 6.1.4 Require the subcontractor to provide waivers and other required billing materials as set forth in Paragraph 9.2, below.
  - 6.1.5 Upon receipt of payment, Contractor shall promptly disburse from such payment, in exchange for waivers, the sums due and owing to any Subcontractor and/or material supplier for their Work included in payment to Contractor. Waivers must be supplied for Subcontractors and/or material suppliers at the time they are listed in the "This Payment" section of the affidavit provided with the waiver.
- 6.2 Labor Harmony. The Contractor shall (and shall expressly require in writing any of its Subcontractors, to) employ only field labor and tradesmen to perform Work on the site whose presence on the jobsite will not result in strikes, work stoppages, picketing, or other labor disputes with any other field labor and tradesmen present on the Project site. The Contractor shall manage its work force so as to avoid labor disputes with its own or other Trades on the job, and shall keep current in the payment of all wages and benefits required to be paid to or on behalf of its employees working on the job under any collective bargaining agreements or trust agreements to which it is signatory. The diligent progress of the Work is of the essence and Contractor's violation of this Paragraph shall be a material breach of this Agreement.

## 7. Changes in the Work

- 7.1 Change Orders. When Pepper so orders in writing, the Contractor shall make any and all changes in the Work that are in the general Scope of this Agreement. Adjustments in the Contract Price or Contract Time, if any, resulting from such changes, shall be set forth in a Contract Change Order pursuant to the Contract Documents. No adjustment shall be made for any changes performed by the Contractor that have not been ordered in writing by Pepper.
- 7.2 Contractor Notification. As additional information or revisions are provided by the Owner, Pepper or Architect, the Contractor shall review such information for inclusion of its Work and notify Pepper within ten (10) working days of any cost or schedule changes to the Contract. If no response is received from Contractor within this time frame, it will be assumed that no additional costs or time extensions will apply. Any changes which are made without prior written authorization of Pepper's Project Manager will be done at Contractor's own risk and payment for such changes is not guaranteed. All revisions causing potential cost increases to the Contractor must be approved prior to commencement of said Work.

- 7.3 Compensation. Compensation for extra work shall be by one or more of the following methods at the option of Owner/Pepper:

- 7.3.1 Unit prices contained in the Scope of Work;
  - 7.3.2 Alternate prices contained in the Scope of Work;
  - 7.3.3 Negotiated Lump Sums;
  - 7.3.4 Negotiated unit prices; or
  - 7.3.5 Cost plus compensation.
  - 7.3.5.1 Cost Plus Compensation. In the case of cost plus compensation, costs shall be defined as and specifically include the following: cost of materials, including sales tax and cost of delivery; cost of labor in the field, including social security, old age and unemployment insurance; Workers' Compensation and general liability costs; bond premiums; and rental value of the power tools and equipment at rates not to exceed those contained in the current edition of the Associated Equipment Distributors Construction Equipment Rental Rates.
- 7.4 Change Order Overhead and Profit.
- 7.4.1 Change Order overhead and profit shall include the following: costs to prepare estimates or Shop Drawings; wages of Superintendents, Project Managers, non-working foremen (unless specifically included in the Scope of Work), timekeepers,

watchmen and clerks; hand tools, incidentals, general office expenses; interest expense; warranty expense; and all other expenses not included in "costs" as defined above.

7.4.2 Unless otherwise stipulated, the following percentages for overhead and profit shall be added to approved costs:

7.4.2.1 For any Work performed by Contractor's own forces: 10% for overhead and 5% for profit.

7.4.2.2 For Work performed by Contractor's Subcontractor: 0% for overhead and 5% for profits of the amount due the Subcontractor.

7.5 Change Order Proposals. To facilitate checking of quotations for extras or credits, all proposals must be accompanied by complete itemization of cost including labor, materials, equipment and Subcontractors.

7.6 Field Changes. For field changes, time and material tickets signed by the Pepper Superintendent at the jobsite are to be retained to verify actual hours worked, and materials and equipment used; such tickets must be signed within twenty-four (24) hours of completing the Work. The verification that the Work is additional work outside of the contractual Scope is subject to approval by Pepper's Project Manager. No changes will be approved without such itemization.

7.7 Concealed Site Conditions. If conditions are encountered at the Project site that are: (1) subsurface or other physical conditions which differ materially from those indicated in the Contract Documents; or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction and activities in the area of the Project, written notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event, later than two (2) days after first observance of such conditions. Unless otherwise provided for in the Contract Documents, equitable adjustment to the Prime Trade Contract Price and Time shall be made by Change Order.

## **8. Jobsite**

8.1 Access/Parking. The use of and access to the site shall be restricted to those areas and limited to those temporary roads authorized and designated by Pepper's on-site Superintendent. Parking on the jobsite is restricted to company vehicles and equipment only if allowed by Pepper's Superintendent. Contractor's employees shall park in designated areas.

8.2 Jobsite Offices/Storage. The Project site may have limited space available for storage; therefore, any on-site storage will require prior approval of Pepper's Superintendent. Contractors' jobsite trailers, materials, tools and equipment may be stored on the jobsite at locations approved by Pepper and must be removed or relocated when directed. Contractor shall use, for this purpose only, the minimum space that is absolutely required for proper performance of the Work. Any damage or losses resulting from storage of material, tools and equipment shall be remedied at the cost of the Contractor. Each Prime Trade Contractor shall be responsible for erection, dismantling, maintenance, utilities, security, etc., that it may deem necessary in setting up its trailers, sheds and storage area.

### **8.3 Temporary Facilities.**

8.3.1 Contractor may establish a temporary office at the jobsite; the exact size and location of said facilities shall be subject to the approval of Pepper's Superintendent. The temporary office, along with any electrical, telephone or similar service for such field office, shall be the responsibility of the Contractor. As the Work progresses, Contractor agrees to relocate and/or remove said facilities upon seventy-two (72) hours written notice from Pepper's Superintendent.

8.3.2 Temporary facilities furnished by Pepper for Contractor's use on the site shall be limited to the following:

8.3.2.1 Temporary sanitary services for Contractor's personnel.

8.3.2.2 Temporary non-potable water service only after the permanent tap is made at water main. Water will be available at a minimum of one location, adjacent to the construction area. It shall be the Contractor's responsibility to provide hook-ups and extensions as required and to coordinate with Pepper's on-site Superintendent.

8.3.2.3 Temporary power and lighting for the building shall be specific to OSHA standards and provided by the Electrical Trade Contractor for all Prime Trade Contractors' use. If special or additional services are required, arrangements through Pepper's on-site Superintendent will be necessary. However, the contractual relationship shall be directly between the on-site Electrical Trade Contractor and Contractor.

8.3.2.4 Temporary power will be limited to 120-volt, single-phase temporary electric service in the construction area only after temporary or permanent power is established on the jobsite. If temporary power is not available or is insufficient for the Contractor, the Contractor shall furnish generators at its expense. The Contractor shall be required to provide extension cords for all power tools.

## **9. Wage Scale and Payments**

### **9.1 Prevailing Wage Requirements.**

9.1.1 Not less than the prevailing rate of wages for work of a similar character in the locality of the Project, as determined by the Illinois Department of Labor, shall be paid to all laborers, workers and mechanics performing Work under this Contract. Contractor shall comply with all requirements of the Illinois Wages of Employees on Public Works Act.

- 9.1.2 It shall be mandatory upon Contractor to cause to be inserted into each lower tiered subcontract and into the Project Specifications for each lower tiered subcontractor a stipulation to the effect of this Paragraph 9.1.
- 9.2 Billing Procedures. The following terms and conditions are an integral part of this Contract:
- 9.2.1 **PEPPER CONSTRUCTION COMPANY IS ONLY ABLE TO PROCESS INVOICES THROUGH ITS ACCOUNTING SYSTEM AFTER THE CONTRACT AGREEMENT HAS BEEN SIGNED WITHOUT ALTERATION AND RETURNED TO PEPPER, INCLUDING APPROPRIATE INSURANCE AND SAFETY DOCUMENTATION.**
- 9.2.2 CHANGES TO CONTRACTOR'S AGREEMENT CANNOT BE BILLED UNTIL A FORMAL CHANGE ORDER HAS BEEN RECEIVED BY CONTRACTOR FROM AN AUTHORIZED REPRESENTATIVE OF PEPPER CONSTRUCTION COMPANY AND EXECUTED BY BOTH CONTRACTOR AND PEPPER. ONCE APPROVED, CHANGES SHOULD NOT BE SEPARATELY BILLED, BUT SHOULD BE INCLUDED IN CONTRACTOR'S MONTHLY BILLING AT THE REVISED CONTRACT AMOUNT.
- 9.2.3 All billings for materials delivered or Work completed will be done per the Pepper billing procedures. The affidavit, a sample of which is attached, **Appendix B, must** accompany all invoicing or Contractor's invoice will be returned unprocessed. See the attached affidavit Completion Requirements for instructions. All amounts to be billed must be approved before requisitions or billings are submitted. Payments received from Owner shall be held for Contractor's account and promptly disbursed according to the terms of this Agreement.
- 9.2.4 Applications for Payment for Work performed and accepted by Owner and Pepper shall include one (1) copy of the following:
- 9.2.4.1 Affidavit;
- 9.2.4.2 Application and Certificate for Payment signed and notarized (AIA G702);
- 9.2.4.3 Schedule of Values (AIA G703) in format approved by Pepper;
- 9.2.4.4 Signed documents for stored material; and
- 9.2.4.5 Signed Sworn Statement (completed as directed on the form to insure Contractor has identified and made all payments which are due and owing Subcontractors and material suppliers); and
- 9.2.5 Applications for Payment for Work performed and accepted by Owner and Pepper shall include three (3) Partial or Final Waivers of Lien, as appropriately required, including waivers from all Subcontractors and material suppliers listed in the "This Payment" section of the Contractor's Affidavit provided with the Waiver.
- 9.2.6 All invoice packages must be received no later than the day of the month indicated on Page 1, above, for Work performed, as projected, from the \_\_\_ to the \_\_\_ of the month. Invoice packages not received by this deadline WILL NOT be processed until the following month.
- 9.2.7 Unless the Owner requires current Waivers of Lien with each Application for Payment, upon Pepper's receipt of payment from the Owner, Contractor will be contacted with the correct information to be inserted in the Chicago Title & Trust ("CT & T") Waiver of Lien and Affidavit. The Affidavit must contain the same information as the Sworn Statement submitted with the pay request and be properly signed and notarized.
- 9.2.8 Owner's payment to Pepper of public funds is a condition precedent to Pepper's obligation to pay Contractor. When payment to Contractor is received from Owner, and provided the billing and insurance requirements have been met as required under this Contract, all payments by Pepper for Contractor's Work accepted by Owner shall be made in the net amount of its request within two (2) business days of receipt of Owner's payment.
- 9.2.9 At the time the final waiver is required, it shall be in the full amount of the adjusted Contract Price.
- 9.2.9 Retainage shall be held as indicated on Page 1, above, and paid to Contractor after approval and acceptance by Owner or Pepper and upon payment by Owner to Pepper.
- 9.2.10 The Affidavit must accompany all invoicing or Contractor's invoice will be returned unprocessed. All amounts to be billed must be approved before the billings are submitted.
- 9.2.11 In the event Contractor suffers financial distress as described in Paragraph 14.1, below, Pepper, on Owner's behalf, may pay Subcontractors or material suppliers directly or tender payment jointly to Contractor and lower tiers.
- 9.3 Accounting Records. Contractor shall make and keep, for a period of not less than three (3) years, true and accurate records of the name, address, telephone number (when available), Social Security number and occupation of all laborers, workers, and mechanics employed by them in connection with the Project. The records shall also show actual hourly wages paid in each pay period to each employee and the hours worked each day in each workweek by each employee. While performing the Work of this Agreement, Contractor's payroll records shall include the starting and ending times of work for each employee. Such records shall be open at all reasonable hours to the inspection of the public body awarding the Contract and others, consistent with applicable law.
- 9.4 Off Site Materials. Unless expressly made a part of the Scope of Work for this Agreement or approved in advance in writing, the cost of construction work completed does not include materials or equipment stored off the site.
10. Safety Regulations

A Pepper representative is required to be on site any time Work is being performed by the Contractor. The Contractor, its agents, employees, Subcontractors and materialmen will comply with all laws, ordinances, and industry standards applicable to the performance of its Scope of the Work on the Project in a safe and responsible manner. In particular, Contractor shall, at its own expense, conform to the safety policies and regulations established by Pepper as listed within this Agreement and within the "Jobsite Safety Handbook", set forth at **Appendix C**, and shall comply with all specific safety requirements promulgated by any government authority, including, without limitation, the requirements of the Occupational Safety and Health Act of 1970, the Construction Safety Act of 1969, and all standards and regulations which have been or shall be promulgated by the parties or agencies which administer the Acts. Contractor shall comply with said requirements, standards, and regulations and require and be directly responsible for compliance therewith on the part of its agents, employees, Subcontractors, and materialmen and shall directly receive, respond to, defend and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its failure on the part of its agents, employees, Subcontractors or materialmen to so comply.

- 10.1 Contractor Safety Plan. The Contractor must develop a site-specific pre-job safety plan outlining any hazards and the procedures it will use to eliminate those hazards. Contractor will review its plan with Pepper's field supervisory personnel and crews. This plan is to be submitted to the Pepper Superintendent at least two (2) weeks prior to commencing Work.
- 10.2 Drug & Alcohol Policy. The Contractor's field personnel assigned to this Project, including Subcontractors of the Contractor, will abide by the **Pepper Drug & Alcohol Policy** as further detailed in the Jobsite Safety Handbook. In addition, Contractor will commit to no drug or alcohol use by its employees over the lunch period or any other break time. Contractor agrees to remove from the jobsite any of its employees or Subcontractor employees who violate this policy.
- 10.3 Accident Report. Contractor shall report immediately to Pepper any injuries suffered by its employees or any injuries to other persons or property damage arising out of its operation. Pepper shall be furnished two (2) copies of the written accident report within four (4) hours of the injury or damage.
- 10.4 Protective Equipment. Contractor will equip its personnel with all necessary personal protective equipment required by law or Pepper. This includes, but is not limited to, hard hats, eye protection, foot and hand protection, ear protection, fall protection and respiratory protection.
- 10.5 Ground Fault Circuit Interrupters. Contractor will assure protection of all of its employees when using electric power equipment by utilizing Ground Fault Circuit Interrupters **at all times**. As supplemental protection, the Assured Equipment Grounding Program may be implemented. As stated in the Jobsite Safety Handbook, all branch circuit conductors shall be permitted within cable assemblies or be multi-conductor cord or cable of a type identified for *hard usage* or *extra hard usage*. NEC Table 400-4 lists "hard" and "extra hard" usage wire types.
- 10.6 Scaffolds and Ladders. All of the Contractor's scaffolds and ladders shall be in accordance with all required safety regulations and manufacturers' requirements.
- 10.7 Fall Protection. Contractor will comply with all applicable standards contained within OSHA's Construction Industry Regulations, Subpart M. With regard to steel erection and decking, Contractor and its employees shall comply with **specific fall protection guidelines**, as contained within the Pepper Project Safety Plan For Steel Erection and within the Instructions to Bidders. In addition, those Contractors engaged in the steel erection process will comply with all requirements of the revised Subpart R Standard, except where the requirements of Pepper's Steel Erection Plan are more stringent. In such cases, the Contractor will abide by the stricter standard.
- 10.8 Safety Policies. Contractor agrees to require all of its employees and Subcontractor's employees to abide by OSHA regulations and Pepper's Jobsite Safety Handbook, **Appendix C**, on all Pepper Projects. Contractor shall provide training to all its employees of the possible hazards associated with the tasks each employee performs and each employee must know and understand all of these safety regulations. Prior to entering the jobsite, ALL PERSONS performing Work must attend the Pepper jobsite safety orientation training.
- 10.9 Contractor's employees are required to attend Pepper's Jobsite Orientation, including viewing of the orientation video, prior to beginning Work at the site. Contractor shall coordinate and schedule the orientation with Pepper's Superintendent in a timely manner for all personnel for this Project. This mandatory orientation consists of a general safety orientation and a Project-specific orientation for each person entering the jobsite.
- 10.10 OSHA Training. Contractor shall ensure that its jobsite Supervisor has completed the ten (10) hour OSHA Construction Safety Course and Contractor shall provide Pepper with certification of such training prior to start of its Work.
- 10.11 Tool Box Safety Meetings. Contractor will hold weekly Tool Box Safety Meetings, led by its jobsite Supervisor. Minutes of the Tool Box Safety Meetings, as well as a signature sheet of all attendees, are to be turned in to the Pepper jobsite Superintendent weekly.
- 10.12 First Aid. Contractor must provide first aid equipment to be made accessible to its employees.
- 10.12 Hazardous Materials.
- 10.13.1 Contractor agrees to submit all necessary Material Safety Data Sheets, MSDS-OSHA Form 20 or equivalent, for all hazardous substances introduced on the jobsite and shall inform Pepper's office prior to its introduction to the jobsite. Contractor must be in compliance with the OSHA Hazard Communication Standard 1926.59. It is imperative that the Material Safety Data Sheets be on file in Pepper's office prior to Contractor's starting Work on the site.



- 10.13.2 Should Contractor encounter existing asbestos, polychlorinated biphenyl (PCB) or other hazardous substances at the site which potentially are harmful to persons or property, Contractor shall take all actions required by the Contract Documents and by law to protect persons and property from injury or damage, including stopping the Contractor's Work in the affected areas and immediately notifying the Owner/Pepper verbally, and shortly thereafter in writing.
- 10.13.3 Should Contractor be required to stop its Work as a result of existing hazardous materials located at the jobsite, Contractor shall not resume its Work in the affected area until the hazardous substances have been removed or rendered harmless or the Owner/Pepper and Contractor agree in writing to commence Work in all or a portion of the area.

## 11. Insurance

- 11.1 Insurance Requirements. Contractor shall maintain during the progress of the Work and, if required to return during the warranty period, insurance written by insurance companies as required by the Owner's Request for Proposals with the minimum limits and coverage as shown below or, if higher, the requirements set forth in the Contract Documents. For purposes of this insurance section, major trades include: Concrete and/or Pre-cast Concrete; Curtainwall; Electrical; HVAC; Plumbing; Steel; and Elevator (collectively, "Major Trades"):
- 11.1.1 **WORKERS' COMPENSATION** including Occupational Disease insurance meeting the statutory requirements of the State in which the Work is to be performed and including **Employers' Liability Insurance** in an amount equal to at least **\$500,000**.
- 11.1.2 **COMMERCIAL GENERAL LIABILITY INSURANCE** on an occurrence basis, providing limits for **Bodily Injury and Personal Injury**, including its own employees, of **\$2,000,000 each occurrence** for Major Trades and **\$1,000,000 each occurrence** for all other trades and **Property Damage** of **\$2,000,000 each occurrence** for Major Trades and **\$1,000,000 each occurrence** for all other trades. The policy must include parties listed in Paragraph 11.2, below, as **Additional Insureds**, on an ISO Additional Insured Endorsement (CG20 10 1985 or 2001 Edition) covering ongoing and completed operations for two (2) years after acceptance of the Contractor's Work, Substantial Completion of the Project, or as otherwise required by the Contract Documents.
- 11.1.3 Contractor must provide **Premises-Operations, Elevators, Independent Contractors, Broad Form Property Damage, Contractual Liability**, and **Products and Completed Operations** coverages which shall be maintained in force for a period of two (2) years after Substantial Completion of the Project or for such longer period of time as is described in the Contract Documents. XCU Exclusions must be deleted when applicable to operations performed by the Contractor. Contractor's insurance will be Primary and Non-Contributory to any insurance carried by any of the Additional Insureds. In addition, Contractor shall maintain an **Umbrella Liability** policy providing the same coverage and with the same Additional Insureds as the basic policy in the amount of **\$5,000,000** for Major Trades and **\$1,000,000** for all other trades.
- 11.1.4 **COMPREHENSIVE AUTOMOBILE LIABILITY** on an occurrence basis covering all Owned, Non-Owned, and Hired Vehicles providing limits of liability for Bodily Injury and Personal Injury, including its own employees, of **\$1,000,000 each occurrence** and **Property Damage** of **\$1,000,000 each occurrence**.
- 11.1.5 **ADDITIONAL INSUREDS:** Contractor's Certificate of Insurance must name the companies listed in Paragraph 11.2, below, as Additional Insureds.
- 11.1.6 A Certificate of Insurance on an approved form, or an endorsement if required by Owner or Pepper, is set forth as **Exhibit 11.1.6**; this must be delivered to CAVECCHE, RICHARD, Pepper Construction Company, \_\_\_\_\_, \_\_\_\_\_, and FAXED TO THE PEPPER JOBSITE SUPERVISOR PRIOR TO THE COMMENCEMENT OF ANY WORK. The Certificate of Insurance must state that coverage will not be altered, cancelled or allowed to expire without thirty (30) days' written notice by registered mail to Pepper.
- 11.1.7 Equivalent insurance coverage must be obtained from each of Contractor's Subcontractors or Suppliers, if any, before permitting them on the Project site. If such coverage is not provided by Subcontractors, protection for those Subcontractors must be included within Contractor's policies.
- 11.1.8 Pepper may furnish, erect or provide equipment, appurtenances and devices, motorized or otherwise, for its use to complete its Agreement with the Owner. Should the Contractor use such items, Contractor agrees to insure against claims of injury or damage caused by such items while in Contractor's care, custody, or control by naming Pepper as an insured party. Liability limits shall be the same as in Subparagraphs 11.1.2 – 11.1.3, above. **Physical Damage Insurance** against damage to the items themselves shall be on a "Replacement Cost" basis.
- 11.1.9 Contractor will be responsible for any deductibles under its insurance policies.
- 11.1.10 It is understood and agreed that Pepper shall withhold payments to the Contractor until a properly executed Certificate of Insurance and endorsement providing insurance as required herein, accompanied by a signed Prime Trade Contract, are received by Pepper. The failure of Pepper to withhold such payments or obtain the required Certificates or endorsement shall not be deemed to be a waiver of Contractor's obligation to provide the insurance required under this Agreement.
- 11.1.11 Contractor hereby waives any rights of subrogation against Owner, Pepper, the Architect, and any other Additional Insured as required by this Agreement or the Request for Proposal. If insurance policies specified within this Article 11 require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed.
- 11.2 Additional Insureds. Contractor's Certificate of Insurance must name the following as Additional Insureds:  
\_\_\_\_\_, Owner, and Owner's Officers and Employees  
Pepper Construction Company, Construction Manager

\_\_\_\_\_, Architect

11.3 Contractor's Tools and Equipment. Contractor shall assume all risks and liability for damage or loss to all materials, tools or equipment not incorporated in the Work and which belong to it or are under its care, custody or control.

11.4 Indemnification. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Pepper, the Architect and others required in the Contract Documents and their agents, other employees and invitees, from and against all claims, damages, losses and expenses, including by not limited to, attorneys' fees ("Claims"), arising out of or resulting from Contractor's performance of or failure to perform its obligations under this Contract, provided that such claim, damage, loss and expense are attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused by negligent acts or omissions of the Contractor, or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable. This indemnification shall not be limited in any way by any limitations on the amount or type of damages, compensation or benefits payable by or for the Contractor under Workers' Compensation, disability benefit or other employee benefit acts.

## 12. Warranties

Contractor shall provide a separate written warranty in triplicate at the time of final billing, guaranteeing its Work against defects in materials and/or workmanship for the period required in the Specifications. If required by the Contract Documents and Request for Proposal, Contractor shall also provide a Manufacturer's Warranty for installed materials and equipment. All warranties shall meet the express terms and conditions required under the provisions of the Contract Documents for the period called for in the Specifications or, if not specified, for twelve (12) months from acceptance of Project by Owner. Contractor shall promptly repair or replace any such defects occurring within the warranty period without cost or liability to Owner or Pepper.

## 13. Equal Employment Opportunity

13.1. Non-Discrimination. During the performance of this Contract, the Contractor agrees as follows:

13.1.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

13.1.2 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

13.1.3 The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

13.1.4 The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

13.1.5 The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

13.1.6 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

13.1.7 The Contractor will include the provisions of Subparagraphs 13.1.1 – 13.1.6, above, in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any Subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## 13.2 Affirmative Action.

13.2.1 The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of

the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- 13.2.2 The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this Contract and those which occur during the performance of this Contract, including those not generated by this Contract and including those occurring at an establishment of the Contractor other than the one wherein the Contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The Contractor further agrees to provide such reports to such local offices regarding employment openings and hires as may be required.

State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in Subparagraphs 13.2.4 and 13.2.5, below.

- 13.2.3 Listing of employment openings with the employment service system pursuant to this Clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive orders or regulations regarding non-discrimination in employment.
- 13.2.4 The reports required by Subparagraph 13.2.2 of this Clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location: (1) the number of individuals hired during the reporting period; (2) the number of non-disabled veterans of the Vietnam era hired; (3) the number of disabled veterans of the Vietnam era hired; and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The Contractor shall submit a report within thirty (30) days after the end of each reporting period wherein any performance is made on this Contract identifying data for each hiring location. The Contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one (1) year after final payment under the Contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.
- 13.2.5 Whenever the Contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this Contract clause.
- 13.2.6 This Clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.
- 13.2.7 The provisions of Subparagraphs 13.2.2-13.2.5 of this Clause do not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.
- 13.2.8 As used in this Clause:
- 13.2.8.1 "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: Production and non-production; plant and office; laborers and mechanics; supervisory and non-supervisory; technical; and executive, administrative, and professional openings as are compensated on a salary basis of less than \$25,000 per year. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement or openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.
- 13.2.8.2 "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.
- 13.2.8.3 "Openings which the Contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the Contractor proposes to fill from regularly established "recall" lists.
- 13.2.8.4 "Openings which the Contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement," means employment openings which the Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Contractor and representatives of his employees.
- 13.2.9 The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

- 13.2.10 In the event of the Contractor's non-compliance with the requirements of this Clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 13.2.11 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notice shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.
- 13.2.12 The Contractor will notify each labor union or representative of workers with which it has a collective bargaining Agreement or other contract understanding, that the Contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.
- 13.2.13 The Contractor will include the provisions of this Clause in every Subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any Contract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.
- 13.2.14 The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to a position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 13.2.15 The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 13.2.16 In the event of the Contractor's non-compliance with the requirements of this Clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 13.2.17 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- 13.2.18 The Contractor will notify each labor union or representative of workers with which it has a collective bargaining Agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- 13.2.19 The Contractor will include the provisions of this Clause in every Subcontract or purchase order of \$2,500 or more unless exempted by rules regulations, or orders of the Secretary issued pursuant to section 503 or the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Subcontractor will take such action with respect to any Contract or purchase order as the Director of the Office of Federal Contract Compliance. Programs may direct to enforce such provisions, including action for non-compliance.

#### **14. Default and Termination**

- 14.1 Default by Contractor. Should the Contractor fail in any manner to perform this Work properly or default in the performance of any provision of this Agreement or suffer any delay not accepted by Owner and Pepper as authorized under the Contract Documents, or should the Contractor suffer any form of financial distress so that it could not give reasonable assurance to Pepper that it can continue to perform its obligations under this Agreement, Pepper may give written notice to the Contractor to begin with all necessary diligence to cure such defaults within a twenty-four (24) hour period or failing to do so, Pepper may, without prejudice to any other remedies it may have under the law or in equity, terminate this Agreement and look to the Contractor or its surety for payment of all damages which it incurs. Owner's and Pepper's remedies shall include, but not be limited to, completing the Work and correcting any defective Work at a commercially reasonable cost given exigent circumstances, the cost of which will be charged against the balance of any sums due Contractor. In the event of such a breach, in addition to any other remedy Owner and Pepper may have, the Contractor agrees to indemnify, defend, and hold Owner and Pepper harmless from all losses, damages, expenses, (including reasonable attorneys' fees) as well as any judgments suffered by Owner and Pepper as a result of Contractor's acts or omissions in the performance of its Work. As to any damages incurred by Pepper, Pepper shall have the right of set off and to deduct from any balance due under this Agreement or from any other accounts under separate contracts under which Pepper is holding net funds due the Contractor.
- 14.2 Default by Owner.
- 14.2.1 Pepper does not financially guarantee the Owner's ability to fund the Project cost. It is an express condition of this Agreement that Pepper's obligation to pay Contractor is contingent upon receipt of payment from Owner for Contractor's Work. Owner's withholding of a Pepper payment due to an alleged failure by Pepper to perform any of its obligations unrelated to this Prime Trade Contract Agreement will not excuse payment to Contractor according to the terms of this Contract Agreement. Retainage shall be held by Pepper as provided in the Owner/Pepper Agreement, or as deemed necessary by Pepper until any failure of performance is corrected and Contractor is in compliance with this Contract Agreement.

14.2.2 In the event of Owner's nonpayment, nothing contained in this Agreement shall be construed as a waiver or impairment of Contractor's mechanic lien rights.

14.3 Contract Termination. It is agreed that should the Owner terminate or stop the progress of the Work of the Project, due to conditions which Owner or Pepper cannot control, Owner or Pepper may terminate this Agreement without any liability to the Contractor and the Contractor will be entitled to payment for materials and/or labor approved and accepted by Pepper and by Owner (including all materials specially manufactured pursuant to this Agreement at the date of its termination), and actually paid to Pepper by Owner. Contractor shall also be entitled to payment for any unavoidable cancellation or restocking charges for material orders.

14.4 Prevailing Party/Attorneys Fees and Costs. In the event any arbitration or legal proceeding is commenced between the parties to this Agreement, the prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' fees and costs, which award shall be determined at the conclusion of the proceedings by the presiding arbitrator(s) or judge.

15. Miscellaneous Terms

15.1 Enumeration of Documents

In addition to this Prime Trade Contract and the Construction Manager Agreement between Owner and Pepper, the Contract Documents are comprised of the following:

Appendix A	Construction Manager's Project Manual
Appendix B	Bid Drawings
Appendix C	Bid Specifications
Appendix D	All Addendums and Other Pertinent Information

15.2 Exemption Status

This project is exempt from Retail Sales Tax.

## APPENDIX A

### SCOPE OF WORK

A. Scope of the Trade Contractor's Work shall include, but not necessarily be limited to the following:

- 1) Enter scope

## Prime Trade Contractor's Affidavit Completion Requirements

**All Affidavits produced by Prime Trade Contractor ("Contractor") to PEPPER CONSTRUCTION COMPANY for the purpose of requesting construction payments shall include the following:**

- A. Identification of the State in which the Project is located;
- B. Identification of the County in which the Project is located;
- C. Identification of the Affiant as an authorized representative of the ↵
- D. Contractor entity;
- E. Identification of the Owner with whom PEPPER CONSTRUCTION COMPANY has contracted as Agent;
- F. Identification of the Project for which services or materials are provided by Contractor;
- G. Description of the improvements or type of labor, service or materials furnished under the Contract (*i.e.*, type of trade work);
- H. Identification of the real estate legal description, if available, or commonly known address of the Project;
- I. Identification of the type of payment being requested: Partial or Final;

For Contractor and each Subcontractor, vendor or material supplier engaged by Contractor, provide:

- J1. Names and addresses;
- J2. Identification of the type of labor, service or materials furnished;
- J3. Base Contract amounts;
- J4. Approved Change Order amounts;
- J5. Base Contract amount (J3) plus/minus Change Order amounts (J4);
- J6. Cumulative previously requested amounts;
- J7. Current payment amounts requested
- J8. Balance of payments to become due (including retainage, if any);
- J9. Total base Contract amounts for Contractor and all subtier entities;
- J10. Total approved Change Order amounts for Contractor and all subtier entities;
- J11. Total Revised Contract amounts for Contractor and all subtier entities;
- J12. Total previously requested amounts for Contractor and all subtier entities;
- J13. Total current payment amounts requested for Contractor and all subtier entities;
- J14. Total balance of payments to become due (including retainage, if any) for Contractor and all subtier entities;
- K1. Base Contract amount;
- K2. Approved extras to the Contract;
- K3. Total of base Contract amount plus amount of approved extras;
- K4. Approved credits to the Contract;
- K5. Total adjusted Contract amount;
- K6. Total amount requested to date;
- K7. Percentage retained;
- K8. Total dollar amount of retained funds to date;
- K9. Net amount earned;
- K10. Total of payments previously requested;
- K11. Amount of current requested payment;
- K12. Balance due to completion of the Work (including retainage);
- L. Percentage of Work completed to date;
- M. Signature and title of Affiant, as shown at A., above;
- N. Contractor Company name, as shown at D., above;
- O. Current date of Affidavit notarization; and
- P. Signature and stamp of Notary to whom the Affidavit is subscribed and sworn.

State of A ) ss.  
County of B )

The Affiant,  
C  
C , being first duly sworn, on oath deposes and says that he/she is an Authorized Representative of D  
D

who is a Prime Trade Contractor ("Contractor"), under an Owner Agreement with           E           to which PEPPER CONSTRUCTION COMPANY has executed as Agent of the Owner for the Project known as           F          , to

provide \_\_\_\_\_ G\_\_\_\_\_ on the following described premises in said County, to wit: \_\_\_\_\_ H\_\_\_\_\_  
That, for the purpose of said Contract, the following persons have been contracted with and have furnished, or are furnishing and preparing materials for, and have performed or are performing labor on said improvement; that there is due and to become due them, respectively, the amounts set forth opposite their names for materials or labor as stated; that this statement is made to said Owner for the purpose of procuring from said Owner \_\_\_\_\_ I\_\_\_\_\_ on said Contract; and this is a full, true and complete statement of all such persons, and of the amounts paid, due, and to become due them.

NAME AND ADDRESS	CONTRACT FOR	BASE CONTRACT AMOUNT	EXTRAS TO CONTRACT	REVISED CONTRACT AMOUNT	TOTAL PREVIOUS REQUEST	AMOUNT OF THIS REQUEST	BALANCE TO COMPLETE
J1	J2	J3	J4	J5	J6	J7	J8
		\$ J9	\$ J10	\$ J11	\$ J12	\$ J13	\$ J14
TOTALS							

AMOUNT OF ORIGINAL CONTRACT	\$	K1	TOTAL AMOUNT REQUESTED	\$	K6
EXTRAS TO CONTRACT	\$	K2	LESS K7 % RETAINED	\$	K8
TOTAL CONTRACT & EXTRAS	\$	K3	NET AMOUNT EARNED	\$	K9
CREDIT TO CONTRACT	\$	K4	AMOUNT OF PREVIOUS PAYMENTS	\$	K10
NET AMOUNT OF CONTRACT	\$	K5	AMOUNT DUE THIS PAYMENT	\$	K11
			BALANCE TO COMPLETE	\$	K12

It is understood that the total amount paid to date plus the amount requested in this Application shall not exceed   L   % of the Cost of the Work completed to date. I agree to furnish Waivers of Lien for all materials under my Contract when demanded.

SIGNED: \_\_\_\_\_  
*M*  
*Signatory Name and Title*

For: \_\_\_\_\_  
*N*  
*Contractor Name*

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

NOTARY PUBLIC: \_\_\_\_\_

The above sworn statement should be obtained by the Owner before each and every payment.





# AIA® Document A201™ – 2007

## General Conditions of the Contract for Construction

for the following PROJECT:

*(Name and location or address)*

Project Name

### THE OWNER:

*(Name, legal status (Name and address)*

McHenry County College

Dr. Vicky Smith, President

8900 U.S. Highway 14

Crystal Lake, Illinois 60012

815-455-8726

### THE ARCHITECT:

*(Name, legal status (Name and address)*

RuckPate Architecture

Steven H. Pate

22102 N. Pepper Road, Suite 201

Lake Barrington, Illinois 60010-2550

847-381-2946

### THE CONSTRUCTION MANAGER:

Pepper Construction Company

William Bennett, Senior Project Executive

411 Lake Zurich Road

Barrington, Illinois 60010-3141

847-381-2760 x 576

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

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User Notes:

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

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

#### § 1.1.2 THE CONTRACT AND CONSTRUCTION DELIVERY

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. ~~The Contractor, (5) between the Construction Manager and Architect. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. The Owner is an intended third party beneficiary of the Contract between Contractor and Construction Manager and may enforce the terms and conditions of the contract against Contractor.~~

Upon award of publicly bid contracts by Owner, Contracts of contractors shall be assigned to Construction Manager or Contractor shall enter into contracts directly with Construction Manager. The use of the term "Contractor" herein shall mean the multiple primes awarded publicly bid contracts and assigned to Construction Manager or who enter into trade contracts directly with Construction Manager.

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work shall also include labor, materials, equipment and services provided or to be provided by Subcontractors, Sub-sub-contractors, material suppliers or any other entity for whom the Contractor is responsible under or pursuant to the Contract Documents. The Contractor acknowledges and agrees that at the time of attachment hereto or incorporation herein each Contract Document is adequate and sufficient to provide for the completion of the Work described therein, and includes all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work described therein in accordance with all applicable laws, rules, ordinances, codes and professional standards.

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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

### § 1.1.7 INSTRUMENTS OF SERVICE

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

### § 1.1.8 INITIAL DECISION MAKER/INITIAL DECISION MAKER

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

### § 1.1.9 FINAL COMPLETION

Final completion is achieved at the time that final inspection has been performed by the Architect and the final Certification and Application for Payment, has been submitted by Construction Manager and Architect to the Owner, and accepted by the Owner for payment.

### § 1.1.10 PROVIDE

Where the word "provide" appears, it shall be interpreted to mean "the Contractor shall furnish all labor, material, equipment and accessory appurtenances or materials necessary to install and/or complete the Work."

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

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor represents that the Subcontractors, manufacturers and suppliers engaged or to be engaged by it have been supplied all Contract Documents necessary to fulfill all prescriptive or performance requirements of the Work.

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

### § 1.3 CAPITALIZATION

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

§ 1.2.4 Site Investigation: By executing the Contract, the Contractor acknowledges that he has satisfied himself as to the nature and location of the work, the general and local conditions, including those bearing upon access (including partial or total restriction in access), transportation, disposal, staging, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, ground water table or similar physical conditions of the ground, the character, quality and quantity of surface and sub-surface materials to be encountered, the character of equipment and facilities needed prior to and during the prosecution of the work and all other matters which can in any way effect the work or the cost thereof under this Contract. Throughout the course of construction Owner shall maintain a full time high quality education program in the facilities under construction. Any failure by the Contractor to acquaint himself with all the available information concerning these conditions will not relieve him from any obligations with respect to his Contract.

§ 1.2.5 Should discrepancies appear among the Contract Documents or between the Contract Documents and existing conditions, the Contractor shall request an interpretation from the Architect before bidding. If the Contractor fails to make such request, it is presumed that both provisions were included in the bid and the Architect shall determine which of the conflicting requirements shall govern. The Contractor shall perform the work at no additional cost to the Owner in accordance with the Architect's determination. Where conflicts exist between or within the Contract Documents or between the Contract Documents and applicable standards, codes, ordinances or manufacturer's recommendations, and clarification has not been requested from the Architect prior to bidding as provided for above, the more stringent or higher quality standard shall prevail. Large scale drawings shall take precedence over small

scale drawings, figured dimensions on the drawings over scaled dimensions and noted material over graphic representations.

§1.2.6 The Contractor shall provide all work and materials which any section or part of the Drawings, Specifications or conditions require him to provide regardless of whether such requirement is or is not faithfully repeated in other parts of documents thereof to which the provision might be appropriate.

§1.2.7 All Work shall conform to the Contract Documents. If work is required in a manner to make impossible to produce work of the highest quality, or should discrepancies appear among the Contract Documents, the Contractor shall request in writing an interpretation from the Architect through the Construction Manager before proceeding with the Work. The Contractor shall not make changes to or deviate from the Construction Documents without receiving written acceptance by the Construction Manager, Architect and Owner. If the Contractor fails to make such request, no excuses will thereafter be entertained for failure to carry out the Work in the required manner or provide required guarantees, warranties or bonds.

§1.2.8 Should a conflict occur in or between Drawings and Specifications. Contract is deemed to have included the better quality and larger quantity of work.

§1.2.9 The Contractor shall provide all work and materials which any Section or part of the Drawings, Specifications or Conditions require him to provide regardless of whether such requirement is or is not faithfully repeated in other parts of Documents thereof to which provisions might be appropriate.

§1.2.10 Whenever a provision of the Specifications conflicts with agreements or regulations in force among members of trade associations, unions or councils which regulate or distinguish what work shall or shall not be included in the Work of a particular trade, the Contractor shall make all necessary arrangements to reconcile such conflict without delay, damage, or cost to the Owner, and without recourse to the Architect or the Owner. In case progress of the Work is affected by undue delay in furnishing or installing items of material or equipment required under the Contract because of a conflict involving such agreement or regulations, the Architect may require that other material or equipment of equal kind and quality be provided at no additional cost to the Owner.

§1.2.11 The Agreement shall govern over all the other Contract Documents. In cases of discrepancies among the Contract Documents other than the Agreement, the matter shall be submitted to the Architect for clarification prior to proceeding with the Work involved. No increase or decrease in Contract Sum shall result, provided such clarification is consistent with the intent of any of the documents in discrepancy.

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

#### **§ 1.4 INTERPRETATION**

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

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

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

§ 1.5.2 The Construction Manager, 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.

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## § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

## ARTICLE 2 OWNER

### § 2.1 GENERAL

~~§ 2.1.1 The Owner is the person or Owner, the Board of Trustees of McHenry Community College is a body politic and corporation, State of Illinois and is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to the extent established by Board Policy to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~

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

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

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the ~~Contractor~~ Construction Manager under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. The Contractor shall provide such information or other assistance as the Architect, Construction Manager or the Owner may request in connection with obtaining such permit. § 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall review such information furnished by the Owner and compare such information with observable physical conditions and the Contract Documents and shall promptly report to Construction Manager, Owner and Architect in writing any conflicts, errors or omissions that it recognizes. The Contractor shall also be responsible for any such conflicts, errors or omissions that it should have recognized exercising the standard of care provided in Subparagraph 3.1.2. The Contractor represents that it has inspected the location of the Work and has satisfied itself as to the condition thereof, including, without limitation, all structural, surface and subsurface conditions based upon the soil and subsurface engineering and investigative reports (including any environmental site assessments), if any, provided by the Owner and such site investigations and other appropriate due diligence investigations as a prudent contractor for a Project of this size, scope and quality would undertake. The Contractor shall undertake such further investigations and studies as may be necessary or useful to determine surface, subsurface and existing conditions. Based upon the foregoing inspections, understandings, agreements and acknowledgements, the Contractor agrees and acknowledged (i) that the Contract Sum is just and reasonable compensation for all the Work, including all reasonably unforeseen, foreseen and foreseeable risks, hazards and difficulties in connection therewith and (ii) that the Contract Time is adequate for the performance of the Work.

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

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

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

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

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials or equipment so as to be able to complete the Work within the Contract Time or fails to remove and discharge (within ten days) any lien filed upon the Owner's property or project designated funds by anyone claiming by, through or under the Contract, or disregards the instructions of the Architect, Construction Manager or the Owner, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. These rights shall be in addition to, and not a restriction of, any other rights of the Owner under this Contract. This right shall be in addition to, and not in restriction or in derogation of Owner's rights under Article 14. The Owner's right to stop the work shall not relieve the Contractor from his sole and exclusive responsibility for site safety. The Owner's exercise of the right to stop the work shall be solely for Multiple Prime Contractor's failure to complete the work in accordance with the Contract Documents and shall in no way be construed as placing the Owner in charge of the work or in any way responsible for site safety.

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ forty eight (48) hour period after receipt of written notice from the Owner or Construction Manager to commence and continue correction of such default or neglect with diligence and promptness, the Owner or Construction Manager may, without prejudice to other remedies the Owner or Construction Manager may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's and Construction Manager's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner or Construction Manager and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference ~~to the Owner to the Owner or Construction Manager, within 10 days after request.~~

### §2.5 OWNER'S RIGHT TO AUDIT

§2.5.1 Each subcontractor shall make and keep for a period of not less than three (3) years full and accurate records of all laborers, mechanics and other workers employed by them on the project and the records shall include each worker's name, address, telephone number, social security number, classification or classifications, the hourly wages paid in each period, the number of hours worked each day and the starting and ending times of work each day (820 ILCS 130/5) as well as material costs incurred and items billed in connection with the performance of the Work, which records shall be open to audit by the Owner or its authorized representatives during performance of the Work and until three years after Final Payment. In addition, the Contractor shall make it a condition of all subcontracts relating to the Work that any and all Subcontractors will keep accurate records of costs incurred and items billed in connection with their work as set forth herein and that such records shall be open to audit by the Owner or its authorized representatives during performance of the Work and until two years after its completion.

Contractor and each subcontractor shall submit monthly a certified payroll to the Owner consisting of (1) the information contained in the preceding paragraph; (2) certification that the records are true and accurate; (3) the hourly rate paid is not less than the general prevailing rate of hourly wages required by the Prevailing Wage Act; (4) affiant is aware that filing a false certified payroll is a Class B misdemeanor.



Upon two (2) business days' notice, Contractor and each subcontractor shall make such records available to Owner at reasonable business hours at Owner's site.

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 GENERAL**

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor means Construction Manager and each Trade Contractor assigned to the Construction Manager and each shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative. Upon award of the publicly bid contracts, each Prime Contractor or Trade Contractor shall enter into a contract directly with Construction Manager.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. The Contractor shall at all times in performing its services under this Agreement exercise the degree of care and due diligence in a manner equivalent to other highly qualified, experienced and reputable contractors performing similar services for large high schools, national colleges and universities for projects of like size, kind and complexity.

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

#### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions including the need for ongoing and uninterrupted operations under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor hereby specifically acknowledges and declares that upon incorporation herein each Contract Document is full and complete through its required level or degree of completion, is sufficient to have enabled the Contractor to make necessary determinations therefrom, including the Cost of the Work and that each of the Drawings, the Specifications and addenda upon incorporation herein is sufficient to enable the Contractor to construct the Work outlined therein. In addition, if the Contractor performs any activity and if it knows or should have known, exercising the standard of care in Subparagraph 3.1.2 that any of the Contract Documents with respect to such activity contains an error, inconsistency or omission, the Contractor shall be responsible for such performance and shall bear the cost for correction thereof.

§3.2.1.1 To the best of Architect's knowledge, materials and systems known to contain hazardous materials have not been specified or shown in the Contract Documents. The Contractor shall review the Contract Document and notify the Owner, Construction Manager and the Architect in writing of any materials and systems shown or specified, which, to the best of Contractor's knowledge, may contain hazardous materials. Except with the Owner's prior written consent, the Contractor shall not incorporate into the Work any materials or systems which to the best of Contractor's knowledge, may contain hazardous materials, even if shown or specified in the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. The exactness of grades, elevations, dimensions, or locations given on any drawings issued by the Architect or the Work installed by other contractors, is not guaranteed by the Architect, Construction Manager or Owner. In all cases of interconnection of his work with existing work, Contractor shall field measure and verify at the site all dimensions relating to such existing or other Work. Any errors due to the

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Contractor's failure to so verify all such grades, elevations, locations, or dimensions shall be promptly rectified by him without extra cost to the Owner.

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

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

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor exercising the standard of care provided in subparagraph 3.1.2 shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. ~~If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.~~

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

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

§3.3.4 The Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate its Work with that of all others on the Project, including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective method of overall installation.

§3.3.5 If any of the Work is required to be inspected or approved by any government authority, the Contractor shall cause such inspection or approval to be performed and coordinate same with the Construction Manager and Owner. No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part hereof.

§3.3.6 The Contractor acknowledges that it is the Contractor's responsibility to hire all personnel for the proper and diligent prosecution of the Work and the Contractor shall use its best efforts to maintain labor peace for the duration of the Project. In the event of a labor dispute, the Contractor shall not be entitled to any increase in the Contract Sum.

### **§ 3.4 LABOR AND MATERIALS**

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall receive and memorialize all materials and labor entering into the Work site and shall keep full, detailed accounts thereof.

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall not permit at any time on the Site, any alcohol or controlled substances whether inside or outside of buildings or structures. Possession or use of any of the foregoing at or adjacent to the Site or nearby shall be adequate grounds for the termination of anyone involved in the Work.

§3.4.4 The Contractor shall engage workmen who are skilled in performing the Work and all Work shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of an approved engineer or foreman. The Contractor shall be liable for all property damage including repairs and replacements of the Work and economic losses which proximately result from the breach of this duty.

§3.4.5 The Contractor and any subcontractors shall be required to conform to labor laws of the State and various acts amendatory and supplementary thereto and to other laws, ordinances and legal requirements applicable thereto. It shall be the duty of the Contractor engaged in this work to enforce among all personnel directly or indirectly employed by him, all rules which the Owner may establish for conduct of such personnel on the premises. The Contractor shall keep a responsible representative on the project throughout the Work until Substantial Completion of the Work and until Final completion of the Work unless Owner shall otherwise consent in writing.

§3.4.6 The Contractor shall pay, if applicable, not less than the prevailing rate of wages as established, to all laborers, workmen, and mechanics in the performance of Work under this Contract pursuant to an act of the General Assembly of the State of Illinois entitled, "An Act regulating wages of laborers, mechanics, and other workmen employed under contracts for public works," 820 ILCS 130/0.01 et seq. To determine the current prevailing wage rate see: (IDOL Website). [www.state.il.us/agency/idol/rates.htm](http://www.state.il.us/agency/idol/rates.htm)

### **§ 3.5 WARRANTY**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be ~~free from defects, except for those inherent of good quality free from defects in the quality of the Work the Contract Documents require or permit.~~ Documents. 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, except modifications necessitated by Contractor's failure to cure, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§3.5.2 The Contractor shall execute and deliver, before final payment, a written two (2) year Warranty in approved form. The warranty shall be of the complete Work. Portions of the Work that fail during the period of the warranty, shall be replaced in whole or in part at no additional cost to the Owner. If Contractor fails to correct defective or nonconforming work, Owner may, but shall not be obligated, to correct it at Contractor's cost, which shall be charged to Contractor. Correction of defective work shall include all damage done to the Project as a result of corrective

action. The period of the Warranty shall be extended for an additional two (2) year for those portions of the Work that fail. Work which is repaired or replaced shall be warranted for two (2) years following the Owner's written acceptance of the repair or replacement.

§3.5.3 All Work included under this Specification, unless extended elsewhere herein, shall be guaranteed against defect in material and workmanship for a period of two (2) years from the date of final acceptance of the Work as evidenced by the issuance of the Final Certificate of Payment and payment by the Owner. This guarantee and the repair and replacement obligations described in 3.5.5 below are in addition to and not in derogation of Owner's right under law.

§3.5.4 Where any material, process or method of operation or application procedure is required, which, in the opinion of the Contractor, would render the Work unsuitable for the required Warranty, then, before any work is started, such unsuitable process or application method shall be objected to in writing to the Architect and the Owner, stating reasons and recommending other methods so that the Work, when completed, will be suitable for the required Warranty. In the event the Contractor's recommendation is approved, the Work shall be installed in accordance therewith, at no change in the Contract Sum, unless otherwise authorized.

§3.5.5 Any defective Work or material shall be replaced or corrected to the satisfaction of Owner immediately upon notification by the Owner at no cost to the Owner. The guarantee of repair or replacement items shall be renewed for an additional two (2) year upon the completion of the repair or replacement.

§3.5.6 Defective materials, equipment or workmanship occurring within the Warranty period may be repaired, where the repair produces results conforming to Contract requirements relating to appearance, performance and reliability. Where the nature of the defective materials, equipment or workmanship is such that acceptable results cannot be obtained by repair, such defective items shall be removed and replaced with new materials, equipment or workmanship complying with the Contract requirements. All remedial work shall be subject to the Architect's approval.

§3.5.7 Certain guarantees are required under various sections of the specifications. At the completion of the Work, all such guarantees covering materials, workmanship, maintenance etc., as specified, shall be secured from the various Subcontractors, Materialmen and Manufacturers of the Contractor, and forwarded to the Construction Manager, together with a letter addressed to the Owner summarizing the guarantees, stating the character of the Work, the Subcontractor or Manufacturer, name of material or equipment Seller, period of guarantee and conditions of guarantee. Owner shall be designated as an intended third party beneficiary of any such Guarantee or Warranty. Further, Contractor by executing the Agreement assigns the right of enforcement of all such Guarantees or Warranties to Owner.

§3.5.8 The Contractor shall furnish maintenance and 24 hour call back service for equipment provided by him for a period of 3 months after final completion. This work shall include all necessary adjustments, greasing, oiling, cleaning, supplies and parts to keep the equipment in proper operation except such parts made necessary by misuse, accidents, or negligence not caused by the Contractor or any of its Subcontractors.

## **§ 3.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Owner, a public body, is exempt from all applicable federal, state and local sales tax. Retail sales tax shall not be included in the contract amount. The Owner's Illinois Tax Exempt No. is E9995-0332-06. To the extent tools, fuel, lumber and other end use or consumption items are not incorporated into the Project, Contractor shall promptly notify Construction Manager in order to afford the Owner the opportunity to purchase these items directly. Should Owner promptly exercise its right to do so, it shall so notify Construction Manager and Contractor. Owner shall be granted a credit against the Contractor's Contract for the direct costs incurred by Owner.

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

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

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received. . The Construction Manager in cooperation with Contractor shall procure all certificates of inspection, use, occupancy, permits and licenses, and give all notices necessary and incidental to the due and lawful prosecution of the Work (or any phase or portion thereof) in sufficient time for occupation of the Project (or any phase or portion thereof) in accordance with the approved schedule for the Work. The costs of such procurement, payment and delivery are included within the Contract Sum.

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Construction Manager, Owner and the Architect before conditions are disturbed and in no event later than ~~21~~ five (5) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

### § 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

### § 3.9 SUPERINTENDENT

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

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

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

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Construction Manager's, Owner's and Architect's information review and approval 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 no less than monthly or more frequent 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. The Construction Schedule shall not be revised without the prior review and approval of the Owner, Construction Manager and the Architect. Contractor shall schedule the Work so as not to cause an interruption of Owner's provision of educational services. Contractor's interruption of the Owner's provision of educational services constitutes a material breach of the contract.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Construction Manager and Architect's approval. The Construction Manager's and Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Owner's, Architect's and Construction Manager's silence to a submitted schedule that exceeds time limits current under the Contract Documents shall not relieve the Contractor of his obligations to meet those time limits, nor shall it make the Owner or Construction Manager liable for any Contractor damages incurred as a result of increased construction time or not meeting those time limits. Similarly, the Owner's and Construction Manager's silence to a Contractor's schedule showing performance in advance of such time limits shall not create or infer any rights in favor of the Contractor for performance in advance of such time limits.

§ 3.10.3 The Contractor shall perform the Work in general strict accordance with the most recent schedules submitted to the Owner and Architect and Architect and approved by Construction Manager.

§3.10.4 Should the Contractor fail to adhere to the Construction Schedule, the Contractor shall furnish such additional labor and/or services, or work sufficient overtime as may be necessary to make progress conform to the Construction Schedule at no additional cost to Construction Manager or Owner. Failure to adhere to the Construction Schedule, or failure to take steps to regain the Construction Schedule shall constitute a cause for either the Owner or Construction Manager to take over portions of the Work in accordance with § 2.4.1 or termination and a declaration of default under the terms of the Agreement.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect ~~Architect~~, Construction Manager and Owner and shall be delivered to the Architect ~~Construction Manager~~ for submittal to the Owner upon completion of the Work as a record of the Work as constructed ~~as constructed~~ and as a condition precedent to final payment, record documents shall be certified by Contractor that they show complete and exact "as-built" conditions: stating sizes, kind of materials, vital piping and conduit locations and similar matters. All Shop Drawings for HVAC, mechanical, electrical, fire protection (sprinkler and alarm) and plumbing and all record drawings and all Drawings and Specifications for the Work shall be available in hard copy and in compatible approved electronic format.

§3.11.2 The Construction Manager shall maintain all approved permit drawings in a manner so as to make them accessible to governmental inspectors and other authorized agencies. All approved permit drawings shall be delivered to the Owner within 30 days of final completion of the Work.

§ 3.11.3 Plans and sections of all concealed work, particularly concealed piping and conduit, and deviations from conditions shown on the Contract Drawings, shall be shown and dimensioned on the record drawings. Contractor shall develop layout drawings for all concealed work that is schematically indicated on Contract Drawings.

§ 3.11.4 The Contractor and his subcontractors shall maintain an accurate record of deviations and changes from the Contract Documents which occur in the work; shall indicate all such deviations and changes on "electronic format" of the Contract Documents; and shall turn over to the Construction Manager upon completion of the work, all such documents and information, such as final shop drawings and sketches, marked prints and similar data indicating the as-built conditions. Plumbing, HVAC and Electrical Contractors shall record all changes or deviations in their work from what appears on the Contract Documents. The "electronic format" of the Contract Documents shall be furnished to the Contractor. The cost of recording and transferring the changes or deviations to the "electronic format" shall be included in the contract price for the respective work including work modified by Change Order. The as-builts shall be delivered by the Contractor to the Construction Manager prior to the final acceptance of the Project and Issuance of final payment.

§ 3.11.5 Each Mechanical and Electrical Contractor shall provide the Construction Manager with one (1) copy of all operating manuals at the time of delivery of each major piece of equipment. The Contractor shall promptly provide the Construction Manager with such copies.

#### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

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

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

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

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

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

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

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

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop

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

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

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

#### § 3.13 USE OF SITE

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

§ 3.12.11 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Contractor shall provide the person or party providing the certification with full information on the relevant performance requirements and on the conditions under which the materials, systems, or equipment will be expected to operate at the project site. The certification shall be based on performance under the operating conditions at the project site. The Architect and Construction Manager shall be entitled to rely upon the accuracy and completeness of certifications.

§ 3.12.12 After the award of the Contract, a request by the Contractor for a substitution of materials or equipment in place of those specified in the Contract Documents will be considered only under one or more of the following conditions:

- (a) Required for compliance with local authority interpretation of code requirement or insurance regulations then existing as approved in writing by the Architect.
- (b) Unavailability of specified products through no fault of the Contractor.
- (c) Subsequent information discloses inability of specified products to perform properly or to fit in designated space.
- (d) Manufacturer/Fabricator refused to certify or guarantee performance of specified product as required.
- (e) When it is clearly seen in the judgment of the Architect that a substitution would be substantially to the Owner's best interest, in terms of cost, time, or other considerations.

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Substitution requests shall be written timely and accompanied by adequate technical and cost data. Requests shall include a complete description of the proposed substitution, name of the material or equipment for which it is to be substituted, drawings, cuts, performance and test data, and any other data or information necessary for a complete evaluation by the Architect

#### **§ 3.13.1 USE OF SITE**

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

§3.13.2 Contractor agrees that it will take reasonable and necessary steps to minimize the impact of the Work on Owner's education programs, and on nearby and adjacent properties, whether owned by the Owner or other persons or entities. In that regard, prior to the start of construction at the Site the Construction Manager shall establish a "Site Access and Control Plan;" which upon approval by the Owner shall constitute a Contract Document. The Site Access and Control Plan shall designate all means of ingress and egress to the Site, parking areas, storage areas, staging and temporary facilities and such other matters as the Construction Manager, Architect, the Owner or any governmental authority deems relevant and shall be consistent with the other Contract Documents and permit the construction of the Work and execution of the Project as otherwise required hereby. The Contractor shall cause all persons at the Site to comply with the Site Access and Control Plan unless directed otherwise by the Construction Manager, Architect, the Owner or any governmental authority, provided however, that notification or direction from a governmental authority in contradiction of the Site Access and Control Plan shall not become a basis for any claim of Change Order for any additional time or cost under the Contract.

#### **§ 3.14 CUTTING AND PATCHING**

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

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

§3.14.3 Costs resulting from ill-timed cutting and patching shall be borne by the party responsible and shall not be the basis for claims for compensation in excess of the Contract Sum.

#### **§ 3.15 CLEANING UP**

§ 3.15.1 The Contractor shall on a daily basis keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Accumulated debris resulting from operations under each Contract shall be removed daily from premises by Contractor responsible for same; or shall be disposed of as directed by the Construction Manager. At completion of the Work, the Contractor shall remove all waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Construction Manager or Owner may do so without notice as required by Article 15 and Construction Manager or Owner shall be entitled to reimbursement from the Contractor.

#### **§ 3.16 ACCESS TO WORK**

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



### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall law, the Contractor shall waive any right of contribution and shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against Construction Manager, the Architect, and their respective agents, employees, board members and directors from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that fees and economic or consequential damages, arising out of or occurring in connection with the performance or lack of performance of the Work to the extent that any 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, caused in whole or in part by any negligence or any act or omission of any contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18 any of them may be liable.

§3.18.1.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend, protect and hold harmless the Owner, Construction Manager, Architect, Architect's consultants and any other person or entity designated by Owner and the trustees, officers, directors, shareholders, board members, partners, representatives, agents, employees of any of them, (collectively, the "Indemnitees") from and against all losses, claims, causes of action, liabilities, injuries, damages and expenses, including but not limited to attorney's and consultant fees and expenses, that the Indemnitees may incur by reason of any injury or damage sustained to any person or property (including, but not limited to, any one or more of the Indemnitees) arising out of, or occurring in connection with, the performance or lack of performance of the Work, breach of the Agreement by Contractor or the acts of omissions of the Contractor, its Subcontractors, sub-subcontractors, suppliers or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable regardless of whether or not such loss, claim, cause of action, liability, injury, damage or expense is caused in part by an Indemnitee. Such obligation shall not extend to losses, claims, causes of action, liabilities, injuries, damages or expenses to the extent such result from the negligence or willful misconduct of an Indemnitee. Nothing herein shall be deemed to abridge the rights, if any, of the Owner, Construction Manager, Architect or the Contractor to seek contribution where appropriate.

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

§3.18.3 The Contractor agrees to indemnify, defend and hold harmless the Indemnitees from and against any and all judicial actions (including reasonable attorney's fees related to any such actions) and judgments incurred by the Indemnitees in connection with any labor related activity arising from the Contractor's performance of the Work. As used in these Contract Documents, "labor related activity" includes, but is not limited to, strikes, walk-outs, informational or organizational picketing, use of placards, distribution of hand-outs, leaflets or other similar acts at or in the vicinity of the Project or in the vicinity of any other facility where the Owner conducts business. The Construction Manager or Owner shall advise the Contractor if any labor related activity occurs and the Contractor shall arrange for the legal representation necessary to protect the Indemnitees' interest, provided such representation is approved by the Owner in advance.

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§3.18.4 The obligations of the Contractor under this Article shall be deemed to include as an additional liability any injury or damage arising from the failure to use or from the misuse by any Contractor or any Contractor's agents or employees, of any scaffold, hoist, crane, ladder, support, temporary stairwell or other mechanical contrivance erected or constructed by any person or for any other kind of equipment owned, furnished or rented.

§3.18.5 The Contractor shall defend each Indemnatee, through counsel selected by such Indemnatee, which approval shall not be unreasonably withheld, in any action, proceedings or arbitration brought against the Indemnatee by reason of any such claim described in this Paragraph 3.18. The Contractor's obligation to defend an Indemnatee shall not extend to any action, proceeding or arbitration which asserts or alleges only that the injury to the claimant resulted solely from the negligence or misconduct of the Indemnatee and from no other cause or if a final judgment is obtained establishing that such injury to the claimant resulted solely from the negligence or willful misconduct of the Indemnatee, in which latter event Contractor's obligation to defend such Indemnatee shall cease upon the date such judgment becomes final, and such Indemnatee shall thereupon reimburse Contractor for its reasonable attorneys' fees and court costs in so defending such Indemnatee.

§3.18.6 The Contractor expressly agrees that he shall have sole and exclusive responsibility to maintain site safety. The obligation of the Contractor under this Section 3.18.6 shall be construed to include, but not be limited to injury or damage upon failure to use or misuse by the Contractor, his agents and employees of any scaffold, hoist, crane, stay, ladder, support or other mechanical contrivance erected or constructed by any person or any or all other kinds of equipment, whether or not owned or furnished by the Contractor. The Contractor expressly agrees that it is exclusively responsible for compliance with OSHA and local regulations for construction and that it is the "employer" on this project within the meaning of those regulations.

§3.18.7 If any claim or lien or stop-notice or any other demand for payment on security therefor, including claims or demands upon performance and payment bond sureties for this Contract, is made or filed with the Owner of the Project by any person claiming that Contractor or any Subcontractor or supplier or any other person claiming under any of them has failed to perform its contractual obligations or to make payment for any labor, services, trust fund contribution, materials, equipment, taxes or other item furnished or obligation incurred for, or in connection with, the Work, or if at any time there shall be evidence of such nonperformance or nonpayment of any claim or lien or stop-notice or other demand for which, if established, the Owner or the Project might become liable, then the Owner shall have the right to retain from any payment then due or thereafter to become due under the Contract or to be reimbursed by Contractor for an amount sufficient to (i) satisfy, discharge and defend against any such claim or lien or stop-notice or other demand, or any action or proceeding thereon which may be brought to judgment or award; (ii) make good any such nonpayment, nonperformance, damage, failure or default; and (iii) compensate the Owner for and indemnify it against any and all loss, liability, damages, cost and expense (including attorneys' and consultants' fees and costs) which may be sustained or incurred in connection therewith.

§ 3.18.8 Contractor shall ensure that its contracts with Subcontractors contain indemnification provisions requiring Subcontractor to provide to Owner, Owner's Representative, Construction Manager, Architect, and Architect's Consultants the same indemnifications provided by Contractor to Owner, Construction Manager, Architect, and Architect's Consultant pursuant to this Agreement. Further, Construction Manager and Owner shall be deemed to be third party beneficiaries of this Agreement for purposes of enforcing the Contractor claims waiver and indemnification provision of this Agreement. Contractor, however, shall not be deemed a third party beneficiary of Construction Manager's Agreement with Owner.

§ 3.18.9 If the work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect, Construction Manager, or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade. In case the progress of the work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of the conflict involving any such agreement or regulation, other material or equipment of equal kind and quality may be provided by the Contractor at no additional cost to the Owner with written approval by the Owner.

§3.18.10 Should any Subcontractor, supplier or other person or Contractor or any of them make, record or file, or maintain any action on or respecting a claim of mechanic's lien, stop-notice, equitable lien, payment or performance

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bond or a lis pendens, relating to the Work, the Contractor shall immediately and at its own expense procure, furnish and record appropriate statutory release bonds.

#### ARTICLE 4 ARCHITECT

##### § 4.1 GENERAL

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

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

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

##### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate ~~for~~ For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, unless otherwise agreed to by the Owner, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Neither the Owner nor The Architect will ~~not~~ have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

##### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the ~~Owner~~ Owner, Architect and Contractor shall endeavor to communicate with each other through the ~~Architect~~ Construction Manager about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with ~~separate contractors shall be through the~~ Owner-Owner's separate contractors, if any shall be through the Construction Manager. Any direct communications between the Owner and the Contractor that affect the performance or administration of the Contract shall be made or confirmed in writing, with copies to the Construction Manager and Architect, and any such communications that represent a modification of the Contract requirements shall be documented appropriately.

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

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

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

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

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

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

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the ~~Owner or Contractor.~~ Owner, Construction Manager or Contractor which request shall indicate a preferred but non-binding time frame for the response to avoid adverse impacts on the Construction Schedule. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

### § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Construction Manager, Owner and Architect through the Architect-Construction Manager the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner, Construction Manager and Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner-Owner, Construction Manager or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner-Owner, Construction Manager or Architect to reply within the 14-day 14 day period shall constitute notice of no reasonable objection.

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution. The Contractor shall not change a Subcontractor, person or entity previously selected unless the Owner, Architect and Construction Manager agrees to such change.

§5.2.5 Upon request, the Contractor shall provide to the Owner, Construction Manager and Architect an executed copy of all subcontracts, purchase orders and other agreements relating to the Work.

### § 5.3 SUBCONTRACTUAL RELATIONS

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

conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Notwithstanding anything contained to the contrary in this Contract, any part of the Work performed for the Contractor or its Sub-contractor shall be pursuant to a written Subcontract between the Contractor and such Subcontractor, which shall be prepared on a master form of Subcontract which the Contractor has, prior to the execution of any such Subcontract (or Sub-subcontractor), submitted for approval to the Construction Manager and Owner, which Subcontract shall contain provisions that (i) require that such portion of the Work be performed in accordance with the requirements of the Contract Documents; (ii) require timely submission of Subcontractor (or Sub-subcontractor, if requested by Owner) payment applications to enable the Contractor to apply for payment in accordance with the provisions of Article 9; (iii) waive all rights the subcontracting parties may have against one another or that the Subcontractor (or Sub-subcontractor) may have against the Owner for damages caused by fire or other perils covered by the property insurance described in Paragraph 11.3; (iv) recognize the rights of the Owner pursuant to the Contingent Assignment of Subcontracts under Subparagraph 5.4.1 and require the Subcontractor (upon notice by the Construction Manager or Owner that the Construction Manager or Owner has terminated the Multiple Prime Contractor pursuant to the terms of Article 14, and the Construction Manager or Owner has elected, pursuant to Subparagraph 5.4.1 to retain the Subcontractor pursuant to the terms of its Subcontract with the Multiple Prime Contractor) to complete the unperformed obligations under such Subcontract and, if requested by the Construction Manager or Owner, to enter into an appropriate agreement evidencing the fact that the Subcontractor is bound to the Construction Manager or Owner under its Subcontract in the manner in which it has been bound to the Multiple Prime Contractor; (v) require the Subcontractor (and Sub-subcontractor) to carry and maintain insurance in accordance with the requirements of the Contract Documents; and (vi) contain no provisions inconsistent with any of the foregoing clauses (i) through (vi) of this Subparagraph 5.3.1.

§5.3.2 The Contractor shall not entertain bid proposals or enter into any subcontract, contract, agreement, purchase order or other arrangement ("Arrangement") for the furnishing of any portion of the materials, services, equipment or Work with any party or entity if such party or entity is an Affiliated Entity (as defined below) unless such Arrangement has been approved by the Owner and Construction Manager, after full disclosure in writing by the Contractor to the Construction Manager and Owner of such affiliation or relationship and all details relating to the proposed Arrangement. The term "Affiliated Entity" means any entity related to or affiliated with the Contractor, its employees, officers or directors or with respect to which the Contractor, its employees, officers or directors has direct or indirect ownership or control, including, without limitation, any entity owned in whole or part by the Contractor, its employees, officers or directors.

#### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

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

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

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

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

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



## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

### § 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Construction Manager or Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the ~~Owner may clean up and the Architect~~ Construction Manager or Owner may without notice as required by Article 15 and clean up and the Construction Manager alone will allocate the cost among those responsible.

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## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

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

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Any substitution for specified or previously approved materials, equipment, systems or procedures proposed by or through the Contractor shall be effective only upon issuance of a Change Order. The Contractor shall notify the Architect immediately upon becoming aware of the unavailability or improper nature of any previously approved materials, equipment, systems or procedures.

§ 7.1.4 For any changes in the Work requested by the Contractor involving more than a three (3) calendar day extension of time, the Contractor shall submit critical path schedules showing the original schedule and impact of the proposed change justifying the requested extension of time. The Owner and/or Construction Manager may at its option refuse the extension of time and have the Contractor perform the work within the original schedule. Contractor shall provide all reasonable costs for completing the work including overtime and acceleration costs as part of its proposal for any Contractor initiated Change Order requesting a time extension.

§ 7.1.5 If a proposal for additional work is requested by the Owner or Construction Manager which involves additional time, at the Owner's or Construction Manager's option, the Owner or Construction Manager may extend the completion date for that portion of the work included in the change, without extending the Contract Time for the remainder of the work.

§ 7.1.6 Changes which involve credits to the Contract Sum shall include overhead, profit, general conditions, bond and insurance costs.

### § 7.2 CHANGE ORDERS

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

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

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

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

§ 7.2.1.2 Adjustments in the Contract Sum and the Contract Time shall be effected only by a properly executed Change Order. The Contractor, Construction Manager and Owner agree that notwithstanding other provisions herein, the combined overhead and profit included in the total cost of any Change Order shall not exceed the following schedule:

1. For the Multiple Prime Contractor, for work performed by his own forces, ten percent (10%) of the cost.
2. For the Multiple Prime Contractor, for work performed by the Multiple Prime Contractor's subcontractor, five percent (5%) of the amount due to the subcontractor.

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- .3 For each Subcontractor or Sub-Subcontractor involved, for work performed by that Subcontractor or Sub-Subcontractor's own forces, ten percent (10%) of the cost.
- .4 Total cost to Owner shall not exceed fifteen percent (15%), regardless of the number of levels of Subcontractors and Sub-Subcontractors involved.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following ~~methods~~ methods subject to the schedule in paragraph 7.2.1.2 :

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

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect and Construction Manager and approved by the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, ~~or if no such amount is set forth in the Agreement, a reasonable amount.~~ Agreement. . . In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

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

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

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

#### § 7.4 MINOR CHANGES IN THE WORK

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

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

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

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

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8. The time of Substantial Completion is of the essence in this Agreement including, but not limited to, the time of Substantial Completion of each phase or portion of the Project, as set forth in the Construction Schedule

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. The term "business day" shall mean a calendar day, exclusive of Saturdays, Sundays and federal holidays.

#### § 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall ~~not knowingly, not~~ except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance and bonding required by Article 11 to be furnished by the Contractor ~~and Owner~~ and Owner and upon receipt of all permits. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Work shall be Substantially Complete to permit Owner to Occupy the Project for its intended use on or before date stipulated in the Contract Schedule.

§ 8.2.4 The Contractor shall reimburse the Owner for all Architect's fees and Construction Manager fees for additional services necessitated by Contractor's failure to achieve Substantial Completion within the time established in the Agreement and for more than one inspection for each Substantial Completion and Final Completion.

### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an wrongful act or neglect of the Owner-Owner, Construction Manager or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, disputes (other than disputes limited to the work force of, or provided by the Contractor or its Subcontractors) , fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; control which could not and should not have been anticipated by it; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. No such Change Order extending the Contract Time shall result in any increased payment to the Contractor for any other amounts of any nature, additional time being the Contractor's sole and exclusive remedy.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. A copy of such Claim shall be delivered to the Owner, Architect and Construction Manager. Construction Manager and Contractor shall take all steps reasonably possible to minimize the impact of such delay on the Owner. § 8.3.3 In no event shall any delays or extensions of time be construed as cause or justification for payment of extra compensation to the Contractor. Any claims for an increase of the Contract Time shall be made in writing to the Construction Manager and Architect within seven (7) days of the cause of delay..

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

§ 8.3.4 The Contractor shall not be entitled to recover from the Owner, Construction Manager or Architect and hereby waives all rights which it or its Subcontractors or any other person may otherwise have to recover, any costs, expenses and damages of any nature which it or its Subcontractors or any other person, may suffer by reason of delay, or disruption in the performance of the Work or any portion thereof for any reason, the extension of Contract Time granted herein being the Contractor's sole and exclusive remedy.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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

§9.1.2 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner or Construction Manager may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract Documents; provided, however that any such holdback shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the Contractor.

### § 9.2 VERIFIED SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and Within twenty one days of Notice of Award, each Contractor shall submit to the Construction Manager a verified Schedule of Values allocated to various portions of the Work, identifying by name and address all Contractors, Subcontractors and others furnishing materials indicating the amount due or to become due in accordance with 770 ILCS 60/5 and with each pay application certified payroll records of labor under the contract in accordance with the Prevailing Wage Act reporting requirements as set forth in 820 ILCS 130/5(a), before any payments are required to be made. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

Construction Manager, Architect or Owner may request.

### § 9.3 APPLICATIONS FOR PAYMENT

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

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requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

Subject to the other terms and conditions regarding payment contained in this Contract, no later than the 13<sup>th</sup> day of each month, each Contractor shall submit to the Construction Manager, Architect and the Owner an itemized Application for Payment in draft form covering payments through the end of such month together with such substantiating data as the Owner and the Architect may require, including but not limited to draft lien waivers, sworn statements, individual labor time cards and information necessary to comply with the Prevailing Wage Act, billing records, invoices and requisitions and reflecting retainage as provided in this Contract. The Owner and the Architect shall review and comment upon such draft submittals. Then, not later than the 18<sup>th</sup> day of the month, the Construction Manager shall deliver to the Architect and the Owner its actual Application for Payment together with appropriate back-up. In addition, such Application for Payment shall contain a certification by each of the Trade Contractors that there are no written claims of mechanics' or materialmen's liens with respect to the Work, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of such Application for Payment, that there is no known basis for the filing of any mechanics' or materialmen's liens on the Work, and that waivers from all Subcontractors and Sub-Subcontractors constitute an effective waiver of lien under the laws of Illinois to the extent of payments that have been made or with respect to payments that will be made concurrently with such Application for Payment. The Architect shall not certify any payment until any and all objections to payment made by the Owner have been satisfactorily resolved. THE LAW REQUIRES THAT THE CONTRACTOR SHALL SUBMIT A SWORN STATEMENT OF PERSONS FURNISHING MATERIALS AND LABOR BEFORE ANY PAYMENTS ARE REQUIRED TO BE MADE TO THE CONTRACTOR, 770 ILCS 60/5.

Owner intends to make payment in reliance upon the accuracy of the verified schedule of values.

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

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. This paragraph shall not be construed as relieving each Contractor from the sole responsibility for all materials and work upon which payments have been made, or the restoration of any damaged or improperly placed Work or as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract.

§9.3.4 The first payment request shall be accompanied by the Construction Manager's and each Contractor's Partial Waiver of Lien only, for the full amount of the payment. Each subsequent monthly payment request shall be accompanied by the Contractor's Partial Waiver for the full amount of the payment, and by the partial Waivers of Subcontractors and Suppliers who were included in the immediately preceding payment request, to the extent of that payment. The above waivers requirements shall not affect the duty of the Construction Manager to pay each Contractor and for each Contractor to promptly pay each Subsubcontractor each month the amount to which he is entitled. Request for final payment shall be accompanied by Final Waivers of Lien from Construction Manager, each Contractor, all Subcontractors and Suppliers of material who have not previously furnished such final waivers. Final waivers shall be for the full amount of the contract.

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## § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's actual 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 Construction Manager, Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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

§9.4.3 All applications for payment shall be accompanied by affidavits from the Contractor and subcontractors containing such information and in such form as approved by Owner. With respect to each payment being made to any Contractor, subcontractor or materialman, the application shall be accompanied by a Waiver of Lien, either partial and/or final, duly executed by the persons who receive the payment and as shown on such affidavits, which Waiver of Lien shall be in a form approved by Owner.

§9.4.4 Owner will make partial payments to Construction Manager promptly after approval at the next regular Board of Trustees meeting on the basis of duly verified and approved Construction Manager and Contractor's applications based upon Work performed during the preceding calendar month under the Contract. Owner will retain ten percent (10%) of the amount of each estimate. Owner reserves the right to reduce the amount of retainage at 50% completion subject to the review and approval of Construction Manager and Surety and at any time, the Owner reserves the right to restore retainage to a full ten percent (10%) of the total work performed and certified by Architect. No interest shall be paid on retention.

§9.4.5 All sworn Statements and Waivers shall be submitted along with payment request not later than the 18th day of the month for work and materials supplied through and including the end of the prior calendar month. If the waivers and affidavits are submitted within the time required above, the Architect will promptly and in no event later than sixty (60) days after the receipt thereof notify the Contractor of the Owner's objection to any waiver or affidavit furnished. The Contractor shall thereafter supply another waiver or affidavit to remedy the defects objected thereto and in no event later than eighteen (18) days after the first of the month following the end of the preceding month for which the affidavit and waiver was applicable. Failure of the Contractor to supply all of the affidavits and waivers in form acceptable to the Owner within the time required above shall be grounds for withholding the entire progress payment for all work and material furnished for the prior month until the next progress payment would become due and all acceptable affidavits and waivers are furnished. Subject to the above conditions, no partial payments on a monthly progress payment application by Contractor will be made if all of the sworn statements and waivers are not acceptable to Owner and are not supplied to the Architect within the time required above.

## § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 actual or threatened 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.
- .8 material failure to comply with any provision of the Contract Documents

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

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

§9.5.4 If the Contractor disputes any determination by the Architect with regard to any Certificate of Payment, the Contractor shall nevertheless expeditiously continue to perform the Work.

§9.5.5 At the election of the Owner, in lieu of the Owner's remedy described in Subparagraph 9.5.1 above, a sufficient sum may be retained by the Owner as determined to be necessary for the purpose of setting aside a reasonable reserve to fully correct the loss or to protect the Owner from the loss for the items above set forth.

§9.5.6 The Owner shall not be deemed to be in breach of this Agreement by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided the Architect has approved the Owner's action or the Work for which payment is being withheld shall have been rejected by any governmental authority.

§9.5.7 If, at any time, there should be evidence of any liens or claims for which, if established, the Owner will become liable and which would be chargeable to the Contractor, the Owner shall have the right to retain, out of any payment due or thereafter to become due an amount sufficient to completely indemnify the Owner against such lien or claim. Should there prove to be any such lien or claim after all payments are made, the Contractor shall repay the Owner all sums which the Owner may be compelled to pay in discharging such lien or claim, including any legal fees or other costs resulting from the lien or claim.

## § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

The Owner shall make payment to the Contractor of the amount specified in the Certificate for Payment (which shall provide for all applicable retentions) on or before the 20th day of the following month. Such payment by the Owner shall not constitute approval at the next regularly scheduled meeting of the Board of Trustees. The Owner shall make no payment until the Owner has received from the Contractor original sworn statements and lien waivers for the portion of the Work covered by such payments current through the period covered and trailing lien waivers for the portion of the Work covered by such payments current through the period covered and lien waivers from Sub-Subcontractors and Materialmen current through not more than 30 days prior to the period covered by such payment.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the



Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

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

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

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents. Documents or relieve Contractor of any of its obligations hereunder with respect thereto.

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

§ 9.6.8 Notwithstanding any other provision to the contrary, the Owner reserves the right to make payment directly to any Subcontractor of the Contractor (or jointly to the Contractor and Subcontractor) in such amounts as the Owner determines to protect the Owner's interest from a lien or asserted lien or other claim, and the amount owed the Contractor shall be reduced by the amount of any such payment by the Owner. Exercise of this option shall not create any claims or rights by any subcontractor or any other party against the owner or the Owner's funds.

## § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within ~~seven days a reasonable time~~ after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven ten~~ (10) days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. Notwithstanding the foregoing, the Contractor shall not stop the Work, nor shall the Contract Time or Contract Sum be increased during the pendency of a bona fide dispute between the Owner, Construction Manager, Architect and the Contractor.

## § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work or phase of the Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of the Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract or phase of the Contract are in place. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations and/or use and enjoyment of the Project. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30)

calendar days or as agreed upon following the Date of Substantial Completion. Upon the Owner's written consent, the Date of Substantial Completion of landscaping portions of the Work, if any, may be as mutually acceptable to the Owner and the Contractor. The Contractor shall secure and deliver to the Construction Manager written warranties and guarantees from its Subcontractors, Sub-Subcontractors and suppliers bearing the date of Substantial Completion or some other date as may be agreed to by the Owner and stating the period of warranty as required by the Contract Documents. The Contractor is responsible for the warranty of all Work, whether performed by it or by its subcontractors at any tier. If in the event Contractor does not complete remaining work within thirty (30) days of Substantial completion, Construction Manager or Owner shall give the Contractor written notice of the remaining Work to be completed. If the Contractor fails to complete the remaining work to be completed within seven (7) days of receipt of the written notice, the Owner or Construction Manager reserves the right to complete the remaining Work in accordance with 2.4 without further notice to the Contractor. All costs incurred by Owner to complete punch list work therein shall be offset against Contractor's final payment.

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

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

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

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

## § 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Construction Manager and Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, the Owner (6) a final Contractors sworn statement from the Contractor duly executed and acknowledged showing all Subcontractors to be fully paid, and similar final sworn statements from Subcontractors and, where appropriate, from Sub-Subcontractors, and final waivers of lien covering all Work and (7) such other information or documentation as Owner may require. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

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

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

#### ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

##### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Each Contractor shall be solely and exclusively responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of its Work on the Contract. Neither the Owner nor the Architect is responsible for safety precautions and programs in connection with the performance of the Work under

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the Contract. Construction Manager shall be responsible for coordinating safety precautions and programs as between Contractors.

## **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

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

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

**§ 10.2.2** The Construction Manager and each Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. If the Construction Manager or Contractor fail to give such notices, or fail to comply with such laws, ordinances, rules, regulations and lawful orders, it shall be liable for and shall indemnify and hold harmless the Indemnitees as provided in Subparagraph 3.18.

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

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager and Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel-personnel and shall give the Owner, Construction Manager, and Architect prior written notice thereof.

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

**§ 10.2.6** The Construction Manager and each Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect. Prior to commencing construction at the Site, each Contractor shall submit to the Construction Manager its written safety plan for the Site (the "Safety Plan") which Safety Plan shall set forth Contractor's proposed safeguards for the Work performed by its forces, coordination with other multiple primes and the safeguards for the Site such as, periodic safety meetings, safety inspections, posted rules and shall provide Construction Manager with monthly updates to the Safety Plan evaluating the status thereunder. In addition, the Contractor shall immediately notify the Construction Manager and Owner of any accidents, injuries or losses at the Site or associated with the Work but in any event within twenty-four (24) hours of such occurrence with a detailed written report within three (3) business days thereof.

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

**§ 10.2.7.1** Neither the Construction Manager nor Contractor shall permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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§10.2.7.2 The Construction Manager and Contractor shall protect adjoining property and shall provide barricades, temporary fences, and covered walkways or other devices required to protect the safety of passers-by, as required by prudent construction practices, local building codes, ordinances or other laws, or the Contract Documents.

§10.2.7.3 The Contractor shall maintain Work, materials and apparatus free from injury or damage from flood, rain, wind, storms, frost, cold or heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, the Contractor shall cease the Work and notify the Construction Manager of such cessation. The Contractor shall not permit open fires on the Project Site. In addition, the Contractor shall, at its sole cost and expense promptly repair any disturbance to walls, utilities, sidewalks, curbs, roadways and the property of third parties (including municipalities) resulting from the performance of the Work, whether by it or by its Subcontractors at any tier. The Contractor shall maintain streets in good repair and traversable and clean condition.

#### **§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

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

#### **§ 10.3 HAZARDOUS MATERIALS**

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

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

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

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

**§ 10.3.5** ~~The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.~~

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

**§10.3.6** The Construction Manager and Contractor shall review the Contract Document and promptly notify the Construction Manager, Owner and the Architect in writing of any materials and systems shown or specified, which, to the best of Contractor's knowledge, contain hazardous materials.

**§10.3.7** Except with the Owner's prior written consent, neither the Construction Manager nor the Contractor shall incorporate into the Work any materials or systems, which to the best of Construction Manager or Contractor's knowledge, contain hazardous materials, even if it is shown or specified in the Contract Documents.

#### **§ 10.4 EMERGENCIES**

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

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

##### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's and Subcontractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.
- .9 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:
  - a. Operations and Premises Liability (including Elevator Liability, if applicable);
  - b. Independent Contractor's Protective Liability;
  - c. Completed Operations and Products Liability (maintained in effect for a period of four years after the date of final payment);
  - d. Personal Injury Liability;

- e. Broad Form Property Damage Liability endorsement, with exclusions "X", explosions, "C", Collapse, and "U", underground deleted;
- f. Contractual, including specified provisions for the Contractor's indemnification obligation hereunder;
- g. Owned, non-owned and hired motor vehicles;
- h. Broad form property damage, including completed operations;
- i. Errors and Omissions Coverage (for design/build or performance portions of the Work, if applicable);
- j. Blanket Contractual Liability (applicable to the Contractor's obligations under Paragraph 3.18);
- k. Personal and Advertising Injury; and
- l. Umbrella excess liability.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Contractor shall maintain, at its own expense, the following insurance coverages on an occurrence basis insuring the Contractor, his employees, and agents, and the Indemnities as required herein which insurance shall be placed with insurance companies rated at least "A", "VI" by Best's Key Rating Guide and shall incorporate a provision requiring the giving of written notice to Owner at least thirty (30) days prior to the cancellation or non-renewal of any such policies.

§11.1.2.1 Contractor's Liability Insurance The Contractor shall not commence Work under this Contract until all insurance required herein is obtained and approved by the; nor shall the Contractor allow any Subcontractor to commence any portion of the Work.

§11.1.2.2 Comprehensive General Liability Insurance (including limited form contractual liability and completed operations, explosion, collapse and underground hazards), covering personal injury, bodily injury and property damages (including a 'subcontractor's exception to the 'your work' exclusion) in the amount of Two Million Dollars (\$2,000,000) covering personal injury, bodily injury and property damage.

§11.1.2.3 Comprehensive Automobile Liability Insurance, including hired and non-owned vehicles, if any, in the amount of One Million Dollars (\$1,000,000) covering personal injury, bodily injury and property damage.

§11.1.2.4 Workmen's Compensation Insurance in the amounts required by law.

§11.1.2.5 Contractual Liability: Bodily injury, Property Damage Two Million Dollars (\$2,000,000) each occurrence, combined single limit, annual aggregate.

§11.1.2.6 Each Contractor shall provide umbrella or excess of loss coverage for Employer's Liability, Comprehensive General Liability and Auto Liability of not less than Two Million Dollars (\$2,000,000) over primary insurance.

§11.1.2.7 Contractor shall submit valid certificates and, if requested, policies and endorsements, in form and substance satisfactory to Owner and Architect evidencing the effectiveness of the foregoing insurance policies along with original copies of the amendatory riders to any such policies to Owner for Owner's approval before Contractor commences the rendition of any services hereunder. In addition, Contractor shall attach to the certificate of insurance Best's current rating of said insurers.

§11.1.2.8 Contractor shall have the Owner, Construction Manager and Architect added as additional insureds to the proceeding comprehensive General Liability Insurance policy, Auto and where necessary, Excess Policy. The insurance policies shall be endorsed to indicate that they are primary as respects the Owner and not contributory with any other insurance available to the Owner.

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**§11.1.2.9** To the fullest extent permitted by law, the Contractor hereby agrees to indemnify and hold the Owner Construction Manager and Architect and their directors, members, officers, agents, and employees (collectively the "Indemnities") harmless from all losses, claims, liabilities, injuries, damages and expenses, including attorneys' fees, that the Indemnities may incur by reason for any injury or damage sustained to any person or property (including, but not limited to any one or more of the Indemnities) arising out of or occurring in connection with the negligent performance or lack of performance by the Contractor of his duties and obligations under or pursuant to this Agreement.

**§11.1.2.10** The Contractor hereby agrees to maintain the insurance described in subparagraphs 11.1.2.1 through 11.1.2.5 herein during the term hereof and for such longer periods as may be set forth in said subparagraphs. If the Contractor fails to furnish and maintain the insurance required herein, the Owner may after written notice to Construction Manager purchase such insurance on behalf of the Contractor, and the Contractor shall pay the cost thereof to the Owner upon demand and shall furnish to the Owner any information needed to obtain such insurance.

**§11.1.2.11** Contractor shall insure specifically the indemnity contained in subparagraph 11.1.2.9 of this Agreement and shall include the Indemnities as additional insureds by causing amendatory riders or endorsements to be attached to the insurance policies described in subparagraphs 11.1.2.1 and 11.1.2.2. The insurance coverage afforded under these policies shall be primary to any insurance carried independently by the Indemnities. Said amendatory riders or endorsements shall indicate that as respects the Indemnities, there shall be severability of interests under said insurance policies for all coverages provided under said insurance policies.

**§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Failure of either the Construction Manager, Architect or Owner to demand Certificates of Insurance and/or policies shall not constitute a waiver of the contractor's responsibility hereunder. Nor shall review and/or approval by either the Construction Manager, Owner or Architect in any way relieve Contractor of its responsibility for furnishing sufficient amounts and coverages of insurance. Said endorsements or amendatory riders shall indicate that as respects said additional insureds, there shall be severability of interests under said insurance policies. The Certificates and amendatory riders or endorsements shall clearly indicate the specific coverage (including contractual liability for the Contractor's obligation under 3.18) and shall contain provision requiring the giving of written notice to Construction Manager and Owner at least thirty (30) days prior to the cancellation, non-renewal or material modification of any such policies, as evidenced by return receipt of United States Certified Mail.

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

## **§ 11.2 OWNER'S LIABILITY INSURANCE**

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

## **§ 11.3 PROPERTY INSURANCE**

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

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entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles by the terms of this insurance any mandatory deductibles are required, or if the Owner elects to increase the mandatory deductible amounts or purchase insurance with voluntary deductible amounts, the Contractor shall be responsible for payment of the deductibles in the event of a paid claim. The Contractor shall carry whatever additional insurance he may deem necessary to protect himself against hazards not covered by the Builder's Risk Insurance, including theft.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. Owner's insurance shall not cover portions of the Work stored off the site unless expressly agreed to by the Owner in writing. The Contractor shall purchase and supply Owner and Construction Manager an all risk Installation Floater Policy which shall include perils of transit, including flood and earthquake, covering all property for this Project which will be in its care, custody and control. The Installation Floater shall name the Owner and Construction Manager as an additional insured. The off site Work to be insured by Contractor must be clearly labeled and identified as owned by Owner; the location of storage shall be approved by Owner. Owner's insurance will not cover equipment such as tools owned by mechanics or tools, sheds, hoists, canvasses, tarpaulins, mixers, scaffolding, shoring, apparatus, machinery staging and towers owned or rented by Contractor and other similar items commonly referred to as construction equipment. At the Contractor's option and expense Contractor may carry theft or other coverage insurance not included in the above coverage, on materials which are in his possession for this project.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.1.6 Liability of Contractor and Subcontractor is not limited by purchase of insurance. Nothing contained in the insurance requirements of the Contract Documents is to be construed as limiting the liability of the Contractor, the liability of any Subcontractor of any tier, or the liability of the Architect, or either of their respective insurance carriers. Owner does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect the Owner, Construction Manager, Contractor, Architect, or any Subcontractor's interest or liabilities, but are merely minimums. The obligation of the Contractor and every Subcontractor of any tier to purchase insurance shall not, in any way, limit their obligations to the Owner in the event that the Owner should suffer an injury or loss in excess of the amount recoverable through insurance, or any loss or portion of the loss which is not covered by either the Architect's, Construction Manager's, Contractor's or any Subcontractor's insurance.

### § 11.3.2 BOILER AND MACHINERY INSURANCE

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

### § 11.3.3 LOSS OF USE INSURANCE

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

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

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

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

§11.3.6.1 SUBCONTRACTOR'S OBLIGATION TO OBTAIN INSURANCE The Contractor shall require that every Subcontractor of any tier obtain insurance of the same character as the Contractor, naming the same Additional Insureds as the insurance required of the Contractor. Before the commencement of any Work by any Subcontractor of any tier, the Contractor shall obtain and furnish the Construction Manager, Owner and Architect with Certificates of Insurance naming the Construction Manager, Owner, Architect, and all of their officers, directors, commissioners, officials, employees, consultants, volunteers and agents, as Additional Insureds on the insurance required to be obtained by each Subcontractor of any tier. Failure to submit such a certification signed by each Subcontractors shall be grounds to withhold payment in full or in part.

§11.3.6.2 Certificate of Insurance Requirements. All Certificates of Insurance and all insurance policies required to be obtained the Contractor and every Subcontractor of any tier shall provide that coverages afforded under the policies will not be canceled, reduced or allowed to expire without at least thirty (30) days prior written notice given to the Construction Manager and Owner. If any of the insurance coverages are required to remain in force after final payment, all additional Certificates evidencing continuation of such coverage shall be submitted with the final application for payment.

§11.3.6.3 Failure to Comply with Insurance Reporting Provisions. All insurance required of the Contractor and all Subcontractors of any tier shall provide that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner, its officers, directors, commissioners, officials, employees, consultants, volunteers or agents.

§11.3.6.4 Insurance Obtained Shall be Primary Insurance. All insurance required the Contractor and all Subcontractors of any tier shall state that the coverage afforded to the Additional Insureds shall be primary insurance of the Additional Insureds with respect to claims arising out of operations performed by or on their behalf. If the Additional Insureds have other insurance which is applicable to the loss, it shall be on an excess or contingent basis



### § 11.3.7 WAIVERS OF SUBROGATION

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

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

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

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

### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. At the Owner's direction, each Contractor, within ten (10) days after receiving notice of the award, shall furnish a Performance Bond and a Payment Bond in the full amount of the Contract agreeing to perform the work and fulfill all obligations in accordance with all of the provisions of the contract with a surety rated no less than A, VI, by Best's Insurance Guide Key.

§ 11.4.2 Before commencing the Work, Contractor shall submit to Owner, Construction Manager and Architect a copies of the bonds. 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.

§ 11.4.3 The Performance Bond and Labor and Material Bonds shall be executed in conformity with American Institute of Architects, Doc. A311 (February, 1970 Edition) or forms approved by Owner. A certified copy of the power of attorney from the surety company stating that the person executing the bond is duly authorized by the Surety to execute the bond shall accompany the bond.

§ 11.4.4 Whenever the Contractor shall be and is declared by the Owner to be in default under the Contract, the surety of the Contractor shall be responsible to make full payment to the Owner, Architect and Construction Manager for any and all extra work and accounting and other expenses incurred by the Owner, Architect and/or Construction

Manager as a result of a Contractor's default and to pay the Owner all attorney's fees in addition to paying additional construction management expenses, testing, consulting, engineering, accounting and court costs incurred by Owner as a result of a Contractor's default and in protecting the Owner's right under the agreement with the Contractor to remedy the Contractor's default or honor the terms of the Performance Bond. The provisions of this clause for charging of costs, fees and extra work against the Contractor shall apply to Subparagraphs 2.4, 14.2.1 and 14.2.2 as though expressly included therein.

**§11.4.5** It shall be the duty of the Surety to give an unequivocal notice in writing to Owner within ten (10) days after receipt of a declaration of default of the Surety's election either to remedy the default or defaults promptly or to perform the contract promptly or to pay to Owner the penal sum of the bond, time being of the essence. In said notice of election, the Surety shall indicate the date on which the remedy or performance will commence, and it shall then be the duty of the Surety to give prompt notice in writing to Owner immediately upon completion of (a) the remedy and/or correction of each default, (b) the remedy and/or correction of each item of condemned Work, (c) the furnishing of each omitted item of Work, and (d) the performance of the contract. The Surety shall not assert solvency of its Principal or its Principal's denial of default as justification for its failure to give notice of election or for its failure to promptly remedy the default or defaults or perform the contract. If the Surety reasonably requires additional time to investigate the declaration of default, Surety shall within the foresaid ten (10) days so notify the Owner. In such case, the Owner may, without prejudice to its rights under the performance bond, continue construction of the Work with a temporary completing contractor on a time and material basis and charge the costs of such work to the Surety. Upon completion of the Surety's investigation, the Surety may exercise its rights otherwise contained herein.

**§11.4.6** As the Work is completed by a completing contractor engaged by Owner in accordance with the terms of the Contract Documents, to the extent that any portion of the Contract Price remains owing after setoff, Owner shall pay completing contractor in accordance with the Schedule of Values as certified by the Architect. Upon the completion of the Work pursuant to the Agreement, if any funds remain due on said Contract, the same shall be paid to Surety. Upon completion of the Work pursuant to the Agreement, if there is any shortfall in the funds remaining due under said Contract, Surety shall make the Owner whole to the extent of the penal sum of the bond.

**§11.4.7** The said Principal and Surety further agree as part of this obligation to pay all such damages of any kind to person or property that may result from a failure in any respect to perform and complete said contract including, but not limited to, all repair and replacement costs necessary to rectify construction error, all architectural and engineering costs and fees, all consultant fees, construction management fees and expenses, all testing and laboratory fees, and all legal fees and litigation costs incurred by Owner as a result of the default.

**§11.4.8** The Surety agrees that other than as is provided in this Bond it may not demand of Owner that Owner shall (a) perform any thing or act, (b) give any notice, (c) furnish any clerical assistance, (d) render any service, (e) furnish any papers or documents, or (f) take any other action of any nature which is not required of Owner to be done under Contract Documents. Any provisions contained within the bonds creating any condition precedent for the Owner not otherwise required herein, or abrogating owner's rights or remedies otherwise available in contract, law, or equity are void.

**§11.4.9** In the event the surety shall make any assignment for the benefit of creditors or commit any act of bankruptcy, or if it shall be declared bankrupt, or if it shall file a voluntary petition in bankruptcy, or shall in the opinion of the Owner be insolvent the Contractor agrees forthwith upon request of the Owner to furnish and maintain other corporate surety with respect to said Bonds satisfactory to the Owner. No further payment shall be deemed due nor shall be paid to the Contractor until new performance and payment bonds are in place.

**§11.4.10** In case of any conflict between any provision of the Performance Bond and the Contract Documents, the provisions of the Contract Documents shall prevail

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 UNCOVERING OF WORK

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

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

## § 12.2 CORRECTION OF WORK

### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within ~~one-two~~ (2) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year-two (2)-year call back warranty period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year-two (2)-year call back warranty period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.12.2 provided, however, that the two year period shall be extended for an additional two years for those portions of the Work that fail.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the ~~one-year-two (2)-year~~ period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

## § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Approval of any material or work at any time during construction will not prevent its subsequent rejection for failure to conform to

the requirements of the Contract Documents. No election by the Owner to correct work shall constitute a waiver of any obligation of a surety upon its performance and labor and material payment bonds.

#### **ARTICLE 13 MISCELLANEOUS PROVISIONS**

##### **§ 13.1 GOVERNING LAW**

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

##### **§ 13.1.1 GOVERNING LAW**

The Contract shall be governed by the law of the Illinois. The Work shall comply with all applicable laws, statutes, ordinances, codes, rules, regulations or orders during its performance and completion. Historical lack of enforcement of any local law shall not constitute a waiver of the Contractor's responsibility for compliance with such law in a manner consistent with the Contract Documents unless and until the Contractor has received written consent for the waiver of such compliance from the Owner and the agency responsible for the local law enforcement.

##### **§13.1.2 PREVAILING WAGE ACT**

The Contractor shall pay not less than the prevailing rate of wages as established, to all laborers, workmen, and mechanics in the performance of the Work under this Contract in accordance with "An Act regulating wages of laborers, mechanics and other workmen employed under contracts for Public Works." 820 ILCS 130/1 et seq. Contractor no later than the tenth (10<sup>th</sup>) day of each calendar month shall file a certified payroll for the immediate preceding month with the Owner and Construction Manager. The certified payroll shall include each worker's name, address, telephone number, social security number, classification or classifications, the hourly wages paid in each pay period, the number of hours worked each day, the starting and ending times of work each day.

##### **§13.1.3 HUMAN RIGHTS ACT**

To the extent required by law, Contractor shall comply with the terms and procedures of the Illinois Human Rights Act. 775 ILCS 10/0.01 et seq. To the extent required by law Contractor agrees as follows:

.1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service, and further that it will examine all job classifications to determine if minority persons or women are under-utilized and will take appropriate affirmative action to rectify any such under-utilization.

.2 That, if it hires employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not under-utilized.

.3 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

.4 That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

.5 That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.

.6 That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.

.7 That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refused to comply therewith. In addition, the contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

#### **§13.1.4 NOT BARRED**

The Contractor by submitting its bid certifies that the Contractor is not barred from bidding on the contract as a result of a conviction for either bid-rigging or bid rotating. 720 ILCS 5/33/E-11.

#### **§13.1.5 DRUG AND TOBACCO FREE WORKPLACE**

The Contractor by submitting its bid certifies that it will provide a drug free and tobacco free workplace and that it is in compliance with the requirements of the Drug Free Workplace Act, 30 ILCS 580.1 et seq.

#### **§13.1.6 SEXUAL HARASSMENT POLICY**

The Contractor by submitting its bid certifies that it has a written sexual harassment policy which includes (i) the illegality of sexual harassment; (ii) a definition of sexual harassment (iii) a description of sexual harassment, utilizing examples; (iv) an internal complaint process including penalties; (v) the legal recourse, investigative and complaint process through the Illinois Department of Human Rights; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation for exercising rights under the policy in accordance with 775 ILCS 5/2-105(A)(4).

§13.1.7 The invalidity of any covenant, restriction, condition, limitation, or any other part or provision of the contract documents shall not impair or affect in any manner the validity, enforceability, or effect of the remainder of the contract document.

§13.1.8 CRIMINAL BACKGROUND CHECK To the extent that any person employed by Contractor or its subcontractors shall have direct daily contact with students in the college, each such employee shall submit to a Criminal Background Check and the Statewide Sex Offender Data Base at Owner expense. Under no circumstances shall any Contractor or Subcontractor employ any person on this Project which is barred from student contact pursuant to 105 ILCS 5/10-21.9.

### **§ 13.2 SUCCESSORS AND ASSIGNS**

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

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

### **§ 13.3 WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. WRITTEN NOTICE All notices given under the Contract Documents shall be in writing and shall be deemed properly served upon receipt if delivered in person, the next business day if delivered by recognized overnight courier

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or, three (3) days after deposit in the United States mail, if sent postage prepaid by United States registered or certified mail, return receipt requested, addressed as set forth on the cover page of the Contract or to such other address or addresses as any party entitled to receive notice hereunder shall designate to all other parties in the manner provided herein for the service of notice.

#### § 13.4 RIGHTS AND REMEDIES

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

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

#### § 13.5 TESTS AND INSPECTIONS

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

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

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

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

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

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

#### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing ~~from time to time at the place where the Project is located in accordance with 815 ILCS 205/2.~~

#### § 13.7 TIME LIMITS ON CLAIMS

~~The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but~~

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~~in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.~~

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## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

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

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

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

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

§ 14.1.4 If the Work is stopped for a period of ~~60~~ninety (90) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The ~~Owner-Construction Manager~~ with Owner's approval and Architect's certification may terminate the Contract if the Contractor

- 1 ~~repeatedly refuses or fails to supply enough properly skilled workers or proper materials; refuses or fails to promptly supply enough properly skilled workers to diligently prosecute the Work or provide proper materials for the Work;~~
- 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 of the Contract Documents, or~~
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The Contractor shall institute proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state law, or if a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing, or if the Contractor admits in writing his inability to pay his debts generally as they become his due, or if he makes a general assignment for the

benefit of his creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of his bankruptcy or insolvency;

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Contractor abandons the work, submits a sworn statement which is intentionally false, or a mechanic's lien or notice of lien is filed against any part of the Work or the site of the project.

.7 the Contractor disregards any laws, statutes, ordinances, rules, regulations or orders of a governmental body or public or quasi-public authority having jurisdiction of the Work or the site of the Project; or

.8 the Owner or Construction Manager, without prejudice to any right or remedy available to the Owner or Construction Manager under the Contract Documents or at law or in equity, may, after giving the Contractor and the Surety under the Performance Bond and under the Labor and Material Payment Bond described in Paragraph 11.4 seven (7) days' written notice, terminate the employment of the Contractor. If requested by the Owner or Construction Manager, the Contractor shall remove any part or all of his equipment, machinery and supplies from the site of the Project within seven (7) days from the date of such request, and in the event of the days from the date of such request, and in the event of the Contractor's failure to do so, the Owner or Construction Manager shall have the right to remove and store such equipment, machinery and supplies at the Contractor's expense. In case of such termination, the Contractor shall not be entitled to receive any further payment for Work performed by the Contractor through the date of termination. The Construction Manager's right to terminate the Construction Manager Contractor Agreement pursuant to this Subparagraph 14.2.1 shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant hereto or at law or in equity.

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

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's and Construction Manager'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. Such costs shall include (but not be limited to) the cost of any additional architectural, managerial and administrative services required thereby, any costs incurred in retaining another Contractor or other subcontractors, any additional interest or fees which the Owner, Architect and/or Construction Manager must pay by reason of a delay in completing of the Work, attorneys' fees and expenses, and any other damages, costs and expenses the Owner may incur by reason of completing the Work or any delay thereof. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

#### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

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

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

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

#### **ARTICLE 15 CLAIMS AND DISPUTES DURING CONSTRUCTION**

##### **§ 15.1 CLAIMS**

##### **§ 15.1.1 DEFINITION**

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

##### **§ 15.1.2 NOTICE OF CLAIMS DURING CONSTRUCTION**

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

##### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

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

##### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

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

##### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

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

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

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

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

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

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

#### **§ 15.2 INITIAL DECISION**

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

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

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

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

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

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

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

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

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

### § 15.3 MEDIATION

§ 15.3.1 ~~Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution, upon agreement of the parties shall be subject to mediation. . All parties shall carry on the Work and perform their duties during any mediation proceedings, and the Owner shall continue to make payments as required by the Contract Documents.~~

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

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

### § 15.4 ARBITRATION

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

§ 15.4.1.1 ~~A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim. During construction and after construction, at the sole discretion of the Owner, all claims, disputes and other matters in question between any of the Architect, Construction Manager, Owner, Contractor, Subcontractor or any material supplier arising out of, or relating to, agreements to which two or more of said parties are bound, or the Contract Documents or the breach thereof, except as provided in subparagraph 4.2.13 with respect to the Architect's decisions on matters relating to aesthetic effect, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtain, as modified herein. At least one member of the arbitration panel shall be an attorney whose practice is primarily focused on the construction industry. In any such arbitration, the arbitrator shall make separate findings as to liability and the amount of damages with respect to each party to the arbitration to the extent any liability or responsibility for damages exists. The Architect, subcontractors and material suppliers who have an interest in the dispute shall be joined as parties to the arbitration. The Owner's contracts with the Architect and Construction Manager and the Contractor's subcontracts with the subcontractors and material suppliers, shall require such joinder. The arbitrator shall have authority to decide all issues between the parties including but not limited to claims for extras, delay and liquidated damages, matters involving defects in the Work, right to payment, whether matters decided by the Architect involve aesthetic effect and whether the necessary procedures for arbitration have been followed. The foregoing agreement to~~

arbitrate and any other agreement to arbitrate with an additional person or persons, duly consented to by the parties, shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§15.4.1.2 Any Claim arising out of or related to the Contract, except those waived as provided for in Subparagraph 9.10.5, may, with the Owner's consent, be subject to arbitration. Prior to arbitration, the parties may, with the Owner's consent, endeavor to resolve disputes by mediation unless otherwise agreed in writing, all parties shall carry on the work and perform their duties during any mediation or arbitration proceedings.

§15.4.1.3 In addition to the other rules of the American Arbitration Association applicable to any arbitration hereunder, the following shall apply:

.1 Promptly upon the filing of the arbitration each party shall be required to set forth in writing and to serve upon each other party a detailed statement of its contentions of fact and law;

.2 All parties to the arbitration shall be entitled to reasonable discovery procedures and to the scope of discovery applicable to civil actions under Illinois law, including the provisions of the Code of Civil Procedure and Illinois Supreme Court rules applicable to discovery. Such discovery shall be noticed, sought and governed by those provisions of Illinois law;

.3 The arbitration shall be commenced and conducted as expeditiously as possible consistent with affording reasonable discovery as provided herein. Similarly, the scope of discovery, and the extent of proceedings hereunder relating to discovery, shall be consistent with the parties' intent that the arbitration be conducted as expeditiously as possible.

.4 The arbitrator(s) shall apply the law of Illinois and the terms and conditions of the Contract Documents and this Agreement.

.5 These additional rules shall be implemented and applied by the arbitrator(s).

§ 15.4.1.4 Claims and Timely Assertion of Claims. In the event of any litigation or arbitration between the parties hereunder, all attorneys' fees and other costs incurred shall be borne by the party determined to be at fault and in the event that more than one party is determined to be at fault, shall be allocated equitably by the court or arbitrator.

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

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

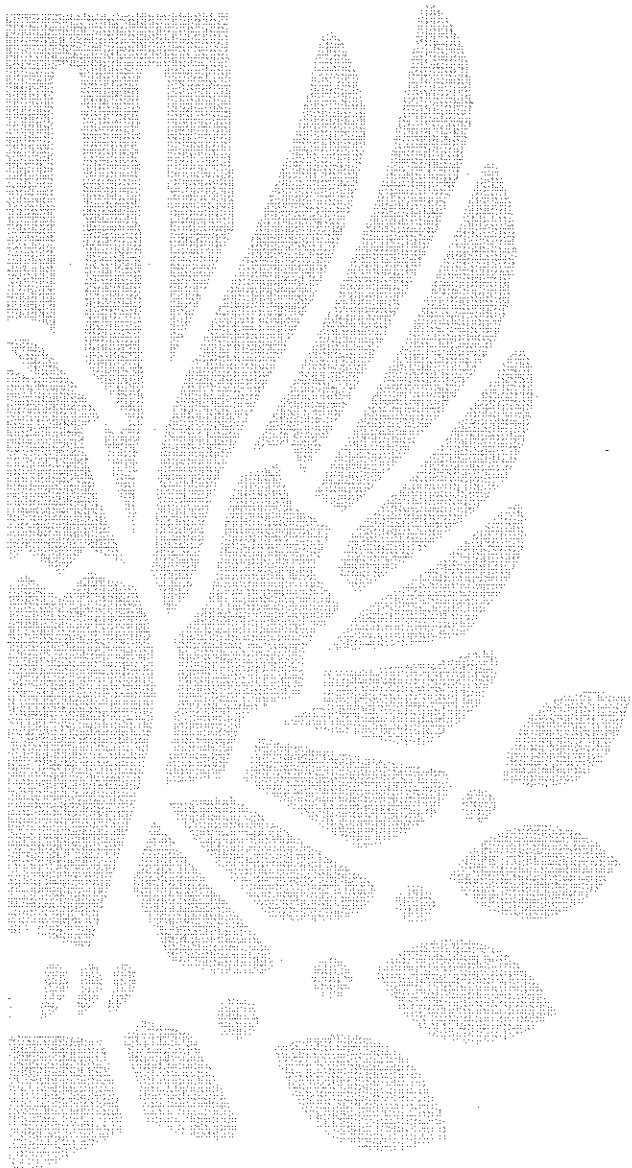
#### **§ 15.4.4 CONSOLIDATION OR JOINDER**

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

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

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

FINAL A201-2007 Culinary Arts Project 2011 01 19



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## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Lorence H. Slutzky, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 13:58:41 on 01/30/2012 under Order No. 9704053250\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

\_\_\_\_\_  
(Signed)

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

\_\_\_\_\_  
(Dated)



# **McHenry County College Classroom / Office Carpet and Paint**

## **Insurance Requirements**

**PEPPER CONSTRUCTION COMPANY  
PRIME TRADE CONTRACTOR INSURANCE  
COVERAGE AND LIMIT REQUIREMENTS**

- 11.1** Prime Trade Contractor ("Trade Contractor") shall maintain, during the progress of the Work and throughout the warranty period, insurance written by insurance companies acceptable to PEPPER with the minimum limits and coverage as shown below or, if higher, the requirements set forth in the Contract Documents. For purposes of this insurance section, major trades include: Concrete and/or Pre-cast Concrete; Curtainwall; Electrical; HVAC; Plumbing; Steel; and Elevator (collectively, "Major Trades").
- 11.1.1** WORKER'S COMPENSATION including Occupational Disease insurance meeting the statutory requirements of the State in which Work is to be performed and containing Employers' Liability insurance in an amount of at least \$500,000.
- 11.1.2** COMMERCIAL GENERAL LIABILITY insurance on an occurrence basis providing limits for Bodily Injury and Personal Injury, including its own employees, of \$2,000,000 each occurrence for Major Trades and \$1,000,000 each occurrence for all other trades and Property Damage of \$2,000,000 each occurrence for Major Trades and \$1,000,000 each occurrence for all other trades. The policy must include the parties listed in Article 11.2, below, as ADDITIONAL INSUREDS, on an ISO Additional Insured Endorsement (CG20 10 1985 or 2001 edition) covering ongoing and completed operations.
- 11.1.3** Trade Contractor must provide Premises-Operations, Elevators, Independent Contractors, Broad Form Property Damage, Contractual Liability, and Products & Completed Operations coverages which shall be maintained in force for a period of two (2) years after Substantial Completion of the Project or for such longer period of time as is described in the Contract Documents. XCU Exclusions must be deleted when applicable to operations performed by the Trade Contractor. Trade Contractor's insurance will be Primary and Non-Contributory to any insurance carried by any of the ADDITIONAL INSUREDS. In addition, Trade Contractor shall maintain an **umbrella** liability policy providing the same coverage and with the same ADDITIONAL INSUREDS as the basic policy in the amount of \$5,000,000 for Major Trades and \$1,000,000 for all other trades.
- 11.1.4** COMPREHENSIVE AUTOMOBILE LIABILITY on an occurrence basis covering all Owned, Non-Owned and Hired Vehicles providing limits of liability for Bodily Injury and Personal Injury, including its own employees, of \$1,000,000 each occurrence and Property Damage of \$1,000,000 each occurrence.
- 11.1.5** Commercial General Liability insurance and other liability insurance may be arranged under a single policy for the full required limits, or by a combination of underlying policies with the balance provided by excess and/or umbrella liability policies that are written on a "next dollar" and "following form" basis.
- 11.1.6** **ADDITIONAL INSUREDS:** Contractor's Certificate of Insurance must name the companies listed in Paragraph 11.2, below, as Additional Insureds.

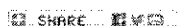


- 11.1.7** A Certificate of Insurance on an approved form, or an endorsement if required by PEPPER, must be delivered to JD Barnes, PEPPER Construction Company, PRIOR TO THE COMMENCEMENT OF ANY WORK. The Certificate must state that coverage will not be altered, cancelled or allowed to expire without thirty (30) days' written notice by registered mail to PEPPER.
- 11.1.8** Equivalent insurance coverage must be obtained from each sub-Trade Contractor or supplier, if any, before permitting them on the Project site. Otherwise, protection of such parties must be included within your Subcontract insurance policies.
- 11.1.9** PEPPER may furnish, erect or provide equipment, appurtenances and devices, motorized or otherwise, for its use to complete its Contract with the Owner. Should the Trade Contractor use such items, the Trade Contractor agrees to insure against claims of injury or damage caused by such items while in Trade Contractor's care, custody or control by naming PEPPER as an insured party. Liability limits shall be the same as in 10(11.1.2), above. Physical Damage insurance against damage to the items themselves shall be on a "Replacement Cost" basis.
- 11.1.10** Trade Contractor will be responsible for any deductible under its insurance policies.
- 11.1.11** It is understood and agreed that PEPPER shall withhold payments to the Trade Contractor until a properly executed Certificate of Insurance and endorsement providing insurance as required herein, accompanied by a signed Subcontract Agreement, are received by PEPPER. The failure of PEPPER to withhold such payments or obtain the required Certificate or endorsement shall not be deemed to be a waiver of Trade Contractor's obligation to provide the insurance required under the Subcontract Agreement.
- 11.1.12** Trade Contractor hereby waives any rights of subrogation against PEPPER, the Owner, the Architect, and any other ADDITIONAL INSUREDS as required by the Owner/PEPPER Contract or the Invitation to Bid. If insurance policies specified within this Article 10 require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Trade Contractor will cause them to be so endorsed.



# **McHenry County College Classroom / Office Carpet and Paint**

## **Certified Payroll & Prevailing Wage Information**



## Wage and Hour Division (WHD)

### Instructions For Completing Payroll Form, WH-347

■ **WH-347 (PDF)**

OMB Control No. 1235-0008, Expires 01/31/2015.

**General:** Form WH-347 has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Under the Davis-Bacon and related Acts, the contractor is required to pay not less than prevailing wage, including fringe benefits, as predetermined by the Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe benefits to bona fide benefit plans, funds or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.

This payroll provides for the contractor to show on the face of the payroll all monies to each worker, whether as basic rates or as cash in lieu of fringe benefits, and provides for the contractor's representation in the statement of compliance on the payroll (as shown on page 2) that he/she is paying for fringe benefits required by the contract and not paid as cash in lieu of fringe benefits. Detailed instructions concerning the preparation of the payroll follow:

**Contractor or Subcontractor:** Fill in your firm's name and check appropriate box.

**Address:** Fill in your firm's address.

**Payroll No.:** Beginning with the number "1", list the payroll number for the submission.

**For Week Ending:** List the workweek ending date.

**Project and Location:** Self-explanatory.

**Project or Contract No.:** Self-explanatory.

**Column 1 - Name and Individual Identifying Number of Worker:** Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

**Column 2 - No. of Withholding Exemptions:** This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

**Column 3 - Work Classifications:** List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. An individual may be shown as having worked in more than one classification provided an accurate breakdown of hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.

**Column 4 - Hours worked:** List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours Standard Act, enter hours worked in excess of 40 hours a week as "overtime".

**Column 5 - Total:** Self-explanatory

**Column 6 - Rate of Pay (Including Fringe Benefits):** In the "straight time" box for each worker, list the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits paid. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, "\$12.25/.40" would reflect a \$12.25 base hourly rate plus \$0.40 for fringe benefits. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. When overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid in the "overtime" box for each worker; otherwise, you may skip this box. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962 if the prime contract exceeds \$100,000. In addition to paying no less than the predetermined rate for the classification which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds or programs or shall pay as cash in lieu of fringe benefits. See "FRINGE BENEFITS" below.

**Column 7 - Gross Amount Earned:** Enter gross amount earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus "\$163.00/\$420.00" would reflect the earnings of a worker who earned \$163.00 on a Federally assisted construction project during a week in which \$420.00 was earned on all work.

**Column 8 - Deductions:** Five columns are provided for showing deductions made. If more than five deduction are involved, use the first four columns and show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deduction(s) contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 C.F.R., Part 3. If an individual worked on other jobs in addition to this project, show actual deductions from his/her weekly gross wage, and indicate that deductions are based on his gross wages.

**Column 9 - Net Wages Paid for Week:** Self-explanatory.

**Totals** - Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

**Statement Required by Regulations, Parts 3 and 5:** While the "statement of compliance" need not be notarized, the statement (on page 2 of the payroll form) is subject to the penalties provided by 18 U.S.C. § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

**Items 1 and 2:** Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "See Deductions column in this payroll." See "FRINGE BENEFITS" below for instructions concerning filling out paragraph 4 of the statement.

**Item 4 FRINGE BENEFITS - Contractors who pay all required fringe benefits:** If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, show the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check paragraph 4(a) of the statement on page 2 of the WH-347 payroll form to indicate the payment. Note any exceptions in section 4(c).

**Contractors who pay no fringe benefits:** If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, pay any remaining fringe benefit amount to each laborer and mechanic and insert in the "straight time" of the "Rate of Pay" column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the application wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate. In addition, check paragraph 4(b) of the statement on page 2 the payroll form to indicate the payment of fringe benefits in cash directly to the workers. Note any exceptions in section 4(c).

### **Use of Section 4(c), Exceptions**

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits. Enter any exceptions to section 4(a) or 4(b) in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid each worker as cash in lieu of fringe benefits and the hourly amount paid to plans, funds, or programs as fringe benefits. The contractor must pay an amount not less than the predetermined rate plus cash in lieu of fringe benefits as shown in section 4(c) to each such individual for all hours worked (unless otherwise provided by applicable wage determination) on the Federal or Federally assisted project. Enter the rate paid and amount of cash paid in lieu of fringe benefits per hour in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

**Public Burden Statement:** We estimate that it will take an average of 55 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**Note:** In order to view, fill out, and print PDF forms, you need Adobe® Acrobat® Reader® version 5 or later, which you may download for free at [www.adobe.com/products/acrobat/readstep2.html](http://www.adobe.com/products/acrobat/readstep2.html). To save the completed forms on your workstation, you need to use the "Save As" method to save the file.

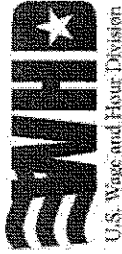
For example, move your mouse cursor over the PDF link and click on your "RIGHT" mouse button. This will cause a menu to be displayed, from which you will select the proper save option -- depending upon which browser you are using:

- For Microsoft IE users, select "Save Target As"
- For Netscape Navigator users, select "Save Link As"

Once you've selected the proper save option for your browser, and have saved the file to a location you specified, go to your program menu and start the Adobe Acrobat® Reader. Once open, locate the PDF file you saved and open it directly in Acrobat®.

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**PAYROLL**  
(For Contractor's Optional Use; See Instructions at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm))



*Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.*

Rev. Dec. 2008

NAME OF CONTRACTOR <input type="checkbox"/>	OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS	OMB No.: 1235-0008 Expires: 01/31/2015
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[illegible]

While completion of Form WH-347 is optional, it is mandatory for covered contractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(g). The Copeland Act (40 U.S.C. § 3146) requires contractors performing work on Federally financed or assisted construction contracts to "submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed 'Statement of Compliance' indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine if employees have received legally required wages and fringe benefits.

### Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W.

(over)

Date \_\_\_\_\_

I, \_\_\_\_\_ (Name of Signatory Party) \_\_\_\_\_ (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ (Contractor or Subcontractor) \_\_\_\_\_ on the

\_\_\_\_\_ (Building or Work) \_\_\_\_\_; that during the payroll period commencing on the

\_\_\_\_\_ day of \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

\_\_\_\_\_ (Contractor or Subcontractor) \_\_\_\_\_ from the full

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967, 76 Stat. 357; 40 U.S.C. § 3145), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:  
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ -- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ -- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE

SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

# Mchenry County Prevailing Wage for March 2013

(See explanation of column headings at bottom of wages)

Trade Name	RG	TYP	C	Base	FRMAN	M-F>8	OSA	OSH	H/W	Pensn	Vac	Trng
=====	==	====	=	=====	=====	=====	=====	=====	=====	=====	=====	=====
ASBESTOS ABT-GEN		ALL		36.200	36.700	1.5	1.5	2.0	12.78	9.020	0.000	0.500
ASBESTOS ABT-MEC		BLD		34.160	36.660	1.5	1.5	2.0	10.82	10.66	0.000	0.720
BOILERMAKER		BLD		43.450	47.360	2.0	2.0	2.0	6.970	14.66	0.000	0.350
BRICK MASON		BLD		40.680	44.750	1.5	1.5	2.0	9.550	12.00	0.000	0.970
CARPENTER		ALL		41.520	43.520	1.5	1.5	2.0	13.19	11.76	0.000	0.530
CEMENT MASON		ALL		41.550	43.550	2.0	1.5	2.0	9.500	13.76	0.000	0.500
CERAMIC TILE FNSHER		BLD		34.440	0.000	2.0	1.5	2.0	9.700	6.930	0.000	0.610
COMMUNICATION TECH		BLD		35.770	37.870	1.5	1.5	2.0	12.07	9.370	0.000	0.450
ELECTRIC PWR EQMT OP		ALL		35.400	48.110	1.5	1.5	2.0	5.000	10.97	0.000	0.270
ELECTRIC PWR GRNDMAN		ALL		27.380	48.110	1.5	1.5	2.0	5.000	8.490	0.000	0.210
ELECTRIC PWR LINEMAN		ALL		42.390	48.110	1.5	1.5	2.0	5.000	13.14	0.000	0.320
ELECTRIC PWR TRK DRV		ALL		28.350	48.110	1.5	1.5	2.0	5.000	8.790	0.000	0.220
ELECTRICIAN		ALL		43.080	47.380	1.5	1.5	2.0	12.06	11.41	0.000	0.540
ELEVATOR CONSTRUCTOR		BLD		49.080	55.215	2.0	2.0	2.0	11.88	12.71	3.930	0.600
FENCE ERECTOR	E	ALL		33.740	35.740	1.5	1.5	2.0	12.61	10.18	0.000	0.250
FENCE ERECTOR	S	ALL		44.950	47.200	2.0	2.0	2.0	8.890	17.69	0.000	0.400
GLAZIER		BLD		39.500	41.000	1.5	2.0	2.0	11.99	14.30	0.000	0.840
HT/FROST INSULATOR		BLD		45.550	48.050	1.5	1.5	2.0	10.82	11.86	0.000	0.720
IRON WORKER	E	ALL		40.750	42.750	2.0	2.0	2.0	13.20	19.09	0.000	0.350
IRON WORKER	S	ALL		44.950	47.200	2.0	2.0	2.0	8.890	17.69	0.000	0.400
IRON WORKER	W	ALL		35.090	36.840	2.0	2.0	2.0	8.250	20.59	0.000	0.700
LABORER		ALL		36.200	36.950	1.5	1.5	2.0	12.52	9.280	0.000	0.500
LATHER		ALL		41.520	43.520	1.5	1.5	2.0	13.19	11.76	0.000	0.530
MACHINIST		BLD		43.550	46.050	1.5	1.5	2.0	6.130	8.950	1.850	0.000
MARBLE FINISHERS		ALL		29.700	0.000	1.5	1.5	2.0	9.550	11.75	0.000	0.620
MARBLE MASON		BLD		39.880	43.870	1.5	1.5	2.0	9.550	11.75	0.000	0.730
MATERIAL TESTER I		ALL		26.200	0.000	1.5	1.5	2.0	12.52	9.280	0.000	0.500
MATERIALS TESTER II		ALL		31.200	0.000	1.5	1.5	2.0	12.52	9.280	0.000	0.500
MILLWRIGHT		ALL		41.520	43.520	1.5	1.5	2.0	13.19	11.76	0.000	0.530
OPERATING ENGINEER		BLD 1		45.100	49.100	2.0	2.0	2.0	15.70	10.55	1.900	1.250
OPERATING ENGINEER		BLD 2		43.800	49.100	2.0	2.0	2.0	15.70	10.55	1.900	1.250
OPERATING ENGINEER		BLD 3		41.250	49.100	2.0	2.0	2.0	15.70	10.55	1.900	1.250
OPERATING ENGINEER		BLD 4		39.500	49.100	2.0	2.0	2.0	15.70	10.55	1.900	1.250
OPERATING ENGINEER		BLD 5		48.850	49.100	2.0	2.0	2.0	15.70	10.55	1.900	1.250
OPERATING ENGINEER		BLD 6		46.100	49.100	2.0	2.0	2.0	15.70	10.55	1.900	1.250
OPERATING ENGINEER		BLD 7		48.100	49.100	2.0	2.0	2.0	15.70	10.55	1.900	1.250
OPERATING ENGINEER		HWY 1		43.300	47.300	1.5	1.5	2.0	15.70	10.55	1.900	1.250
OPERATING ENGINEER		HWY 2		42.750	47.300	1.5	1.5	2.0	15.70	10.55	1.900	1.250
OPERATING ENGINEER		HWY 3		40.700	47.300	1.5	1.5	2.0	15.70	10.55	1.900	1.250
OPERATING ENGINEER		HWY 4		39.300	47.300	1.5	1.5	2.0	15.70	10.55	1.900	1.250
OPERATING ENGINEER		HWY 5		38.100	47.300	1.5	1.5	2.0	15.70	10.55	1.900	1.250
OPERATING ENGINEER		HWY 6		46.300	47.300	1.5	1.5	2.0	15.70	10.55	1.900	1.250
OPERATING ENGINEER		HWY 7		44.300	47.300	1.5	1.5	2.0	15.70	10.55	1.900	1.250
ORNAMNTL IRON WORKER E	ALL			40.800	43.300	2.0	2.0	2.0	12.86	15.61	0.000	0.500
ORNAMNTL IRON WORKER S	ALL			44.950	47.200	2.0	2.0	2.0	8.890	17.69	0.000	0.400
PAINTER		ALL		40.880	42.880	1.5	1.5	1.5	9.650	8.200	0.000	1.250
PAINTER SIGNS		BLD		33.920	38.090	1.5	1.5	1.5	2.600	2.710	0.000	0.000
PILEDRIIVER		ALL		41.520	43.520	1.5	1.5	2.0	13.19	11.76	0.000	0.530
PIPEFITTER		BLD		45.050	48.050	1.5	1.5	2.0	8.460	14.85	0.000	1.780
PLASTERER		BLD		40.250	42.670	1.5	1.5	2.0	10.85	10.94	0.000	0.550
PLUMBER		BLD		44.500	47.500	1.5	1.5	2.0	11.05	12.40	0.000	1.700
ROOFER		BLD		38.350	41.350	1.5	1.5	2.0	8.280	8.770	0.000	0.430



SHEETMETAL WORKER	BLD	42.160	44.160	1.5	1.5	2.0	9.890	11.61	0.000	0.780
SIGN HANGER	BLD	26.070	27.570	1.5	1.5	2.0	3.800	3.550	0.000	0.000
SPRINKLER FITTER	BLD	49.200	51.200	1.5	1.5	2.0	10.25	8.200	0.000	0.450
STEEL ERECTOR	E ALL	40.750	42.750	2.0	2.0	2.0	13.20	19.09	0.000	0.350
STEEL ERECTOR	S ALL	44.950	47.200	2.0	2.0	2.0	8.890	17.69	0.000	0.400
STONE MASON	BLD	40.680	44.750	1.5	1.5	2.0	9.550	12.00	0.000	0.970
TERRAZZO FINISHER	BLD	35.510	0.000	1.5	1.5	2.0	9.700	9.320	0.000	0.400
TERRAZZO MASON	BLD	39.370	42.370	1.5	1.5	2.0	9.700	10.66	0.000	0.550
TILE MASON	BLD	41.430	45.430	2.0	1.5	2.0	9.700	8.640	0.000	0.710
TRAFFIC SAFETY WRKR	HWY	28.250	29.850	1.5	1.5	2.0	4.896	4.175	0.000	0.000
TRUCK DRIVER	ALL 1	35.850	36.400	1.5	1.5	2.0	7.200	6.000	0.000	0.150
TRUCK DRIVER	ALL 2	36.000	36.400	1.5	1.5	2.0	7.200	6.000	0.000	0.150
TRUCK DRIVER	ALL 3	36.200	36.400	1.5	1.5	2.0	7.200	6.000	0.000	0.150
TRUCK DRIVER	ALL 4	36.400	36.400	1.5	1.5	2.0	7.200	6.000	0.000	0.150
TUCKPOINTER	BLD	40.950	41.950	1.5	1.5	2.0	8.180	10.82	0.000	0.940

## Legend:

RG (Region)

TYP (Trade Type - All, Highway, Building, Floating, Oil &amp; Chip, Rivers)

C (Class)

Base (Base Wage Rate)

FRMAN (Foreman Rate)

M-F&gt;8 (OT required for any hour greater than 8 worked each day, Mon through Fri.)

OSA (Overtime (OT) is required for every hour worked on Saturday)

OSH (Overtime is required for every hour worked on Sunday and Holidays)

H/W (Health &amp; Welfare Insurance)

Pensn (Pension)

Vac (Vacation)

Trng (Training)

## Explanations

### MCHENRY COUNTY

FENCE ERECTOR (EAST) - That part of the county East and Northeast of a line following Route 31 North to Route 14, northwest to Route 47 north to the Wisconsin State Line.

IRONWORKERS (EAST) - That part of the county East of Rts. 47 and 14.

IRONWORKERS (SOUTH) - That part of the county South of Route 14 and East of Route 47.

IRONWORKERS (WEST) - That part of the county West of Route 47.

The following list is considered as those days for which holiday rates of wages for work performed apply: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and Veterans Day in some classifications/counties. Generally, any of these holidays which fall on a Sunday is celebrated on the following Monday. This then makes work performed on that Monday payable at the appropriate overtime rate for holiday pay. Common practice in a given local may alter certain days of celebration. If in doubt, please check with IDOL.

### EXPLANATION OF CLASSES

ASBESTOS - GENERAL - removal of asbestos material/mold and hazardous materials from any place in a building, including mechanical systems

where those mechanical systems are to be removed. This includes the removal of asbestos materials/mold and hazardous materials from ductwork or pipes in a building when the building is to be demolished at the time or at some close future date.

ASBESTOS - MECHANICAL - removal of asbestos material from mechanical systems, such as pipes, ducts, and boilers, where the mechanical systems are to remain.

#### CERAMIC TILE FINISHER

The grouting, cleaning, and polishing of all classes of tile, whether for interior or exterior purposes, all burned, glazed or unglazed products; all composition materials, granite tiles, warning detectable tiles, cement tiles, epoxy composite materials, pavers, glass, mosaics, fiberglass, and all substitute materials, for tile made in tile-like units; all mixtures in tile like form of cement, metals, and other materials that are for and intended for use as a finished floor surface, stair treads, promenade roofs, walks, walls, ceilings, swimming pools, and all other places where tile is to form a finished interior or exterior. The mixing of all setting mortars including but not limited to thin-set mortars, epoxies, wall mud, and any other sand and cement mixtures or adhesives when used in the preparation, installation, repair, or maintenance of tile and/or similar materials. The handling and unloading of all sand, cement, lime, tile, fixtures, equipment, adhesives, or any other materials to be used in the preparation, installation, repair, or maintenance of tile and/or similar materials. Ceramic Tile Finishers shall fill all joints and voids regardless of method on all tile work, particularly and especially after installation of said tile work. Application of any and all protective coverings to all types of tile installations including, but not be limited to, all soap compounds, paper products, tapes, and all polyethylene coverings, plywood, masonite, cardboard, and any new type of products that may be used to protect tile installations, Blastrac equipment, and all floor scarifying equipment used in preparing floors to receive tile. The clean up and removal of all waste and materials. All demolition of existing tile floors and walls to be re-tiled.

#### COMMUNICATIONS TECHNICIAN

Construction, installation, maintenance and removal of telecommunication facilities (voice, sound, data and video), telephone, security systems, fire alarm systems that are a component of a multiplex system and share a common cable, and data inside wire, interconnect, terminal equipment, central offices, PABX and equipment, micro waves, V-SAT, bypass, CATV, WAN (wide area network), LAN (local area networks), and ISDN (integrated system digital network), pulling of wire in raceways, but not the installation of raceways.

#### MARBLE FINISHER

Loading and unloading trucks, distribution of all materials (all stone, sand, etc.), stocking of floors with material, performing all rigging for heavy work, the handling of all material that may be needed for the installation of such materials, building of scaffolding, polishing if needed, patching, waxing of material if damaged, pointing up, caulking, grouting and cleaning of marble,

holding water on diamond or Carborundum blade or saw for setters cutting, use of tub saw or any other saw needed for preparation of material, drilling of holes for wires that anchor material set by setters, mixing up of molding plaster for installation of material, mixing up thin set for the installation of material, mixing up of sand to cement for the installation of material and such other work as may be required in helping a Marble Setter in the handling of all material in the erection or installation of interior marble, slate, travertine, art marble, serpentine, alberene stone, blue stone, granite and other stones (meaning as to stone any foreign or domestic materials as are specified and used in building interiors and exteriors and customarily known as stone in the trade), carrara, sanionyx, vitrolite and similar opaque glass and the laying of all marble tile, terrazzo tile, slate tile and precast tile, steps, risers treads, base, or any other materials that may be used as substitutes for any of the aforementioned materials and which are used on interior and exterior which are installed in a similar manner.

MATERIAL TESTER I: Hand coring and drilling for testing of materials; field inspection of uncured concrete and asphalt.

MATERIAL TESTER II: Field inspection of welds, structural steel, fireproofing, masonry, soil, facade, reinforcing steel, formwork, cured concrete, and concrete and asphalt batch plants; adjusting proportions of bituminous mixtures.

#### OPERATING ENGINEER - BUILDING

Class 1. Asphalt Plant; Asphalt Spreader; Autograde; Backhoes with Caisson Attachment; Batch Plant; Benoto (requires Two Engineers); Boiler and Throttle Valve; Caisson Rigs; Central Redi-Mix Plant; Combination Back Hoe Front End-loader Machine; Compressor and Throttle Valve; Concrete Breaker (Truck Mounted); Concrete Conveyor; Concrete Conveyor (Truck Mounted); Concrete Paver Over 27E cu. ft; Concrete Paver 27E cu. ft. and Under; Concrete Placer; Concrete Placing Boom; Concrete Pump (Truck Mounted); Concrete Tower; Cranes, All; Cranes, Hammerhead; Cranes, (GCI and similar Type); Creter Crane; Crusher, Stone, etc.; Derricks, All; Derricks, Traveling; Formless Curb and Gutter Machine; Grader, Elevating; Grouting Machines; Highlift Shovels or Front Endloader 2-1/4 yd. and over; Hoists, Elevators, outside type rack and pinion and similar machines; Hoists, One, Two and Three Drum; Hoists, Two Tugger One Floor; Hydraulic Backhoes; Hydraulic Boom Trucks; Hydro Vac (and similar equipment); Locomotives, All; Motor Patrol; Lubrication Technician; Manipulators; Pile Drivers and Skid Rig; Post Hole Digger; Pre-Stress Machine; Pump Cretes Dual Ram; Pump Cretes: Squeeze Cretes-Screw Type Pumps; Gypsum Bulker and Pump; Raised and Blind Hole Drill; Roto Mill Grinder; Scoops - Tractor Drawn; Slip-Form Paver; Straddle Buggies; Tournapull; Tractor with Boom and Side Boom; Trenching Machines.

Class 2. Boilers; Broom, All Power Propelled; Bulldozers; Concrete Mixer (Two Bag and Over); Conveyor, Portable; Forklift Trucks; Highlift Shovels or Front Endloaders under 2-1/4 yd.; Hoists, Automatic; Hoists, Inside Elevators; Hoists, Sewer Dragging Machine; Hoists, Tugger Single Drum; Rock Drill (Self-Propelled); Rock Drill (Truck Mounted); Rollers, All; Steam Generators; Tractors, All; Tractor Drawn Vibratory Roller; Winch Trucks with "A" Frame.

Class 3. Air Compressor; Combination Small Equipment Operator;

Generators; Heaters, Mechanical; Hoists, Inside Elevators; Hydraulic Power Units (Pile Driving, Extracting, and Drilling); Pumps, over 3" (1 to 3 not to exceed a total of 300 ft.); Low Boys; Pumps, Well Points; Welding Machines (2 through 5); Winches, 4 Small Electric Drill Winches; Bobcats (up to and including  $\frac{3}{4}$  cu yd.) .

Class 4. Bobcats and/or other Skid Steer Loaders (other than bobcats up to and including  $\frac{3}{4}$  cu yd.); Oilers; and Brick Forklift.

Class 5. Assistant Craft Foreman.

Class 6. Gradall.

Class 7. Mechanics.

#### OPERATING ENGINEERS - HIGHWAY CONSTRUCTION

Class 1. Asphalt Plant; Asphalt Heater and Planer Combination; Asphalt Heater Scarfire; Asphalt Spreader; Autograder/GOMACO or other similar type machines; ABG Paver; Backhoes with Caisson Attachment; Ballast Regulator; Belt Loader; Caisson Rigs; Car Dumper; Central Redi-Mix Plant; Combination Backhoe Front Endloader Machine, (1 cu. yd. Backhoe Bucket or over or with attachments); Concrete Breaker (Truck Mounted); Concrete Conveyor; Concrete Paver over 27E cu. ft.; Concrete Placer; Concrete Tube Float; Cranes, all attachments; Cranes, Tower Cranes of all types: Creter Crane: Crusher, Stone, etc.; Derricks, All; Derrick Boats; Derricks, Traveling; Dowell Machine with Air Compressor; Dredges; Formless Curb and Gutter Machine; Grader, Elevating; Grader, Motor Grader, Motor Patrol, Auto Patrol, Form Grader, Pull Grader, Subgrader; Guard Rail Post Driver Truck Mounted; Hoists, One, Two and Three Drum; Hydraulic Backhoes; Backhoes with shear attachments; Lubrication Technician; Manipulators; Mucking Machine; Pile Drivers and Skid Rig; Pre-Stress Machine; Pump Cretes Dual Ram; Rock Drill - Crawler or Skid Rig; Rock Drill - Truck Mounted; Rock/Track Tamper; Roto Mill Grinder; Slip-Form Paver; Soil Test Drill Rig (Truck Mounted); Straddle Buggies; Hydraulic Telescoping Form (Tunnel); Tractor Drawn Belt Loader (with attached pusher - two engineers); Tractor with Boom; Tractaire with Attachments; Trenching Machine; Truck Mounted Concrete Pump with Boom; Raised or Blind Hole Drills (Tunnel Shaft); Underground Boring and/or Mining Machines 5 ft. in diameter and over tunnel, etc; Underground Boring and/or Mining Machines under 5 ft. in diameter; Wheel Excavator; Widener (APSCO).

Class 2. Batch Plant; Bituminous Mixer; Boiler and Throttle Valve; Bulldozers; Car Loader Trailing Conveyors; Combination Backhoe Front Endloader Machine (Less than 1 cu. yd. Backhoe Bucket or over or with attachments); Compressor and Throttle Valve; Compressor, Common Receiver (3); Concrete Breaker or Hydro Hammer; Concrete Grinding Machine; Concrete Mixer or Paver 7S Series to and including 27 cu. ft.; Concrete Spreader; Concrete Curing Machine, Burlap Machine, Belting Machine and Sealing Machine; Concrete Wheel Saw; Conveyor Muck Cars (Haglund or Similar Type); Drills, All; Finishing Machine - Concrete; Highlift Shovels or Front Endloader; Hoist - Sewer Dragging Machine; Hydraulic Boom Trucks (All Attachments); Hydro-Blaster; All Locomotives, Dinky; Off-Road Hauling Units (including articulating)/2 ton capacity or more; Non Self-Loading Ejection Dump; Pump Cretes; Squeeze Cretes - Screw Type Pumps, Gypsum Bulker and Pump; Roller,

Asphalt; Rotary Snow Plows; Rototiller, Seaman, etc., self-propelled; Scoops - Tractor Drawn; Self-Propelled Compactor; Spreader - Chip - Stone, etc.; Scraper; Scraper - Prime Mover in Tandem (Regardless of Size); Tank Car Heater; Tractors, Push, Pulling Sheeps Foot, Disc, Compactor, etc.; Tug Boats.

Class 3. Boilers; Brooms, All Power Propelled; Cement Supply Tender; Compressor, Common Receiver (2); Concrete Mixer (Two Bag and Over); Conveyor, Portable; Farm-Type Tractors Used for Mowing, Seeding, etc.; Fireman on Boilers; Forklift Trucks; Grouting Machine; Hoists, Automatic; Hoists, All Elevators; Hoists, Tugger Single Drum; Jeep Diggers; Low Boys; Pipe Jacking Machines; Post-Hole Digger; Power Saw, Concrete Power Driven; Pug Mills; Rollers, other than Asphalt; Seed and Straw Blower; Steam Generators; Stump Machine; Winch Trucks with "A" Frame; Work Boats; Tamper-Form-Motor Driven.

Class 4. Air Compressor; Combination - Small Equipment Operator; Directional Boring Machine; Generators; Heaters, Mechanical; Hydraulic Power Unit (Pile Driving, Extracting, or Drilling); Hydro- Blaster; Light Plants, All (1 through 5); Pumps, over 3" (1 to 3 not to exceed a total of 300 ft.); Pumps, Well Points; Tractaire; Welding Machines (2 through 5); Winches, 4 Small Electric Drill Winches.

Class 5. Bobcats (all); Brick Forklifts; Oilers.

Class 6. Field Mechanics and Field Welders.

Class 7. Gradall and machines of like nature.

TRAFFIC SAFETY - work associated with barricades, horses and drums used to reduce lane usage on highway work, the installation and removal of temporary lane markings, and the installation and removal of temporary road signs.

TRUCK DRIVER - BUILDING, HEAVY AND HIGHWAY CONSTRUCTION

Class 1. Two or three Axle Trucks. A-frame Truck when used for transportation purposes; Air Compressors and Welding Machines, including those pulled by cars, pick-up trucks and tractors; Ambulances; Batch Gate Lockers; Batch Hopperman; Car and Truck Washers; Carry-alls; Fork Lifts and Hoisters; Helpers; Mechanics Helpers and Greasers; Oil Distributors 2-man operation; Pavement Breakers; Pole Trailer, up to 40 feet; Power Mower Tractors; Self-propelled Chip Spreader; Skipman; Slurry Trucks, 2-man operation; Slurry Truck Conveyor Operation, 2 or 3 man; Teamsters; Unskilled Dumpman; and Truck Drivers hauling warning lights, barricades, and portable toilets on the job site.

Class 2. Four axle trucks; Dump Crets and Adgetors under 7 yards; Dumpsters, Track Trucks, Euclids, Hug Bottom Dump Turnapulls or Turnatrailers when pulling other than self-loading equipment or similar equipment under 16 cubic yards; Mixer Trucks under 7 yeards; Ready-mix Plant Hopper Operator, and Winch Trucks, 2 Axles.

Class 3. Five axle trucks; Dump Crets and Adgetors 7 yards and over; Dumpsters, Track Trucks, Euclids, Hug Bottom Dump Turnatrailers or turnapulls when pulling other than self-loading equipment or similar equipment over 16 cubic yards; Explosives and/or Fission Material

Trucks; Mixer Trucks 7 yards or over; Mobile Cranes while in transit; Oil Distributors, 1-man operation; Pole Trailer, over 40 feet; Pole and Expandable Trailers hauling material over 50 feet long; Slurry trucks, 1-man operation; Winch trucks, 3 axles or more; Mechanic--Truck Welder and Truck Painter.

Class 4. Six axle trucks; Dual-purpose vehicles, such as mounted crane trucks with hoist and accessories; Foreman; Master Mechanic; Self-loading equipment like P.B. and trucks with scoops on the front.

#### TERRAZZO FINISHER

The handling of sand, cement, marble chips, and all other materials that may be used by the Mosaic Terrazzo Mechanic, and the mixing, grinding, grouting, cleaning and sealing of all Marble, Mosaic, and Terrazzo work, floors, base, stairs, and wainscoting by hand or machine, and in addition, assisting and aiding Marble, Masonic, and Terrazzo Mechanics.

#### Other Classifications of Work:

For definitions of classifications not otherwise set out, the Department generally has on file such definitions which are available. If a task to be performed is not subject to one of the classifications of pay set out, the Department will upon being contacted state which neighboring county has such a classification and provide such rate, such rate being deemed to exist by reference in this document. If no neighboring county rate applies to the task, the Department shall undertake a special determination, such special determination being then deemed to have existed under this determination. If a project requires these, or any classification not listed, please contact IDOL at 217-782-1710 for wage rates or clarifications.

#### LANDSCAPING

Landscaping work falls under the existing classifications for laborer, operating engineer and truck driver. The work performed by landscape plantsman and landscape laborer is covered by the existing classification of laborer. The work performed by landscape operators (regardless of equipment used or its size) is covered by the classifications of operating engineer. The work performed by landscape truck drivers (regardless of size of truck driven) is covered by the classifications of truck driver.