

State of West Virginia

Supplementary Conditions to AIA Document A107-2007
Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope

The following Supplementary Conditions modify the Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope, AIA Document A107, 2007 Edition. Where a portion of the Standard Form of Agreement is modified or deleted by these Supplementary Conditions, the unaltered portions of the Agreement shall remain in effect.

ARTICLE 2
DATE OF COMMENCEMENT AND
SUBSTANTIAL COMPLETION

§ 2.1 Insert the following language in Section 2.1 relating to the date of commencement of the Work:

The date of commencement of the Work shall be the date of receipt of the Owner's written notice to proceed.

§ 2.3 Insert the following language in Section 2.3 relating to liquidated damages:

The Owner will suffer financial loss if the Work is not Substantially Complete within the Contract Time as defined in Article 14, and if Final Completion is not achieved within the specified time frame following Substantial Completion. As liquidated damages, and not as a penalty, the Contractor and the Contractor's surety shall be liable for and pay the Owner the amount indicated in the Contract Documents, as liquidated damages, for each calendar day of delay in achieving Substantial Completion. For each calendar day of delay in achieving Final Completion, the Contractor and the Contractor's surety shall be liable for and shall pay half of the amount of liquidated damages, plus any additional fees of the Architect and the Architect's consultants that may accrue. Allowances may be made for delays due to shortages of materials and/or energy resources, subject to proof by documentation, and also for delays due to strikes or other delays beyond the control of the Contractor. All delays and any Claim for extension of Contract Time must be properly documented in accordance with the Contract Documents by the Contractor and must be made in accordance with Article 21.

ARTICLE 3
CONTRACT SUM

§ 3.1 Section 3.1 is hereby amended to provide that the Contract Sum shall be a Stipulated Sum in accordance with Section 3.2. Any references in the Agreement to any other Contract Sum calculation methods are hereby deleted.

§ 3.3 Delete Section 3.3 in its entirety.

§ 3.4 Delete Section 3.4 in its entirety.

ARTICLE 4
PAYMENTS

§ 4.1 PROGRESS PAYMENTS

§ 4.1.4 Insert the following language in Section 4.1.4:

Until the Work is fifty percent (50%) complete, the Owner will withhold as retainage ten percent (10%) of the amount due the Contractor on account of progress payments. At the time the Work is fifty percent (50%) complete and thereafter, if the manner of completion of the Work and its progress are and remain satisfactory to the Owner and Architect, and in the absence of other good and sufficient reasons, the Architect will, on presentation by the Contractor of Consent of Surety, authorize any remaining partial payments to be paid in full.

The full Contract retainage may be reinstated if the manner of completion of the Work and its progress do not remain satisfactory to the Owner and Architect, if the Surety withholds its consent, or for other good and sufficient reasons.

§ 4.1.5 Insert the following language in Section 4.1.5:

Any interest due and payable for payments due and unpaid under the Contract Documents shall be made pursuant to West Virginia Code.

§ 4.2 FINAL PAYMENT

Add the following clause to Section 4.2.2:

§ 4.2.2.1 Unless and to the extent Final Completion is delayed through no fault of the Contractor, the Owner shall be under no obligation to increase payments above 95% until Final Completion of the Work is certified by the Architect. Before final payment is due the Contractor, all applicable state and local taxes must be paid. The Contractor shall present evidence that payment or satisfaction of all such tax obligations has been made.

ARTICLE 5
DISPUTE RESOLUTION

§ 5.1 Delete Section 5.1 in its entirety and substitute the following:

§ 5.1 For any claim, dispute or other matter in question arising out of this Agreement subject to, but not resolved by, mediation pursuant to Section 21.3, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction as provided in Section 21.7.

ARTICLE 7
GENERAL PROVISIONS

Add the following Section to Article 7:

§ 7.05 PARTY RELATIONS

§ 7.05 The Owner and its Consultants, the Architect and its Consultants, and the Contractor and its Subcontractors agree to proceed with the Work on the basis of mutual trust, good faith and fair dealing.

§ 7.1 THE CONTRACT DOCUMENTS

§ 7.1 Add the following sentence at the end of Section 7.1:

The Contract Documents also include the Bidding Documents (Advertisement or Invitation to Bid, Request for Quotations/Bids, Instructions to Bidders, Form of Proposal, Bid Bond and Sample Forms), Performance Bond, Payment Bond, Maintenance Bond (if applicable), Certificates of Insurance, Special Provisions For Disadvantaged and Women Business Enterprise Utilization (if found herein) and West Virginia Department of Labor Wage Rates.

ARTICLE 8
OWNER

§ 8.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 8.1.2 Delete Section 8.1.2 in its entirety and substitute the following:

§ 8.1.2 The Contractor shall confirm all information furnished by the Owner including, but not limited to, the location of each utility. If the Owner has provided geotechnical and other tests to determine subsurface conditions, the Owner will provide such documents to the Contractor; the Contractor acknowledges that it will make no claims for any subsurface or any other conditions revealed by these tests.

Add the following Section to Article 8:

§ 8.4 OWNER'S PROJECT REPRESENTATIVE

§ 8.4 The Owner reserves the right to maintain a full-time project representative at the site who shall have such duties and responsibilities as the Owner may assign. The Owner's representative shall not interfere with or be responsible for the Contractor's means, methods, techniques, sequences and procedures for accomplishing the Work.

ARTICLE 9
CONTRACTOR

§ 9.1.2 Add the following sentence to the end of Section 9.1.2:

Claims by Contractor resulting from its failure to familiarize itself with the site or pertinent documents shall be deemed waived.

§ 9.1.3 Delete Section 9.1.3 in its entirety and substitute the following:

§ 9.1.3 The Contractor acknowledges its continuing duty to review and evaluate the Construction Documents during performance of the Work and shall immediately notify the Owner and the Architect about any problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.

Add the following Sections to 9.1:

§ 9.1.4 If the Contractor performs any Work which it knows or should have known involves a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Owner and the Architect prior to receiving written authorization from the Architect to proceed, the Contractor shall be responsible for the consequences of such performance.

§ 9.1.5 Before ordering any materials or doing any Work, the Contractor and its Subcontractors shall verify all measurements at the site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Architect prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on the drawings, if such differences do not result in a change in the scope of Work or if the Architect failed to receive written notice before the Work was performed.

§ 9.3 LABOR AND MATERIALS

Add the following Clauses to Section 9.3.1:

§ 9.3.1.1 In accordance with West Virginia Code § 5-19-1 *et seq.*, every contract and subcontract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works, where the cost is more than \$50,000 and, in the case of steel only, where the cost of steel is more than \$50,000 or where more than 10,000 pounds of steel are required, the State will accept only aluminum, glass, or steel products produced in the United States. In addition, items of machinery or equipment purchased for use at the site of public works, shall be made of domestic aluminum, glass or steel, unless the cost of the product is less than \$50,000 or less than 10,000 pounds of steel are used in the public works project.

§ 9.3.1.2 Foreign made aluminum, glass or steel products may be accepted only if the cost of domestic products is found to be unreasonable. Such cost is unreasonable if it is twenty percent (20%) or more higher than the bid price for foreign made products. If the domestic aluminum, glass or steel products to be supplied or produced are in a "substantial labor surplus area," as defined by the United States Department of Labor, foreign made products may be supplied only if domestic products are thirty percent (30%) or more higher in price than the foreign made products.

§ 9.3.1.3 If, prior to the award of a contract under the above provisions, the spending officer of the spending unit determines that there exists a bid for like foreign aluminum, glass or steel that is reasonable and lower than the lowest bid for domestic products, the spending officer may request in writing a reevaluation and reduction in the lowest bid for such domestic products. All vendors must indicate in their bids if they are supplying foreign aluminum, glass or steel.

§ 9.3.1.4 PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS

.1 Except when authorized by the director of the Purchasing Division pursuant to Subclause .2 below, no contractor may use or supply steel products for a state project other than those steel products made in the United States. As used in this contract:

- a. "State contract project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of any materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.

- b. "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.

- c. "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

.2 The director of the Purchasing Division may, in writing, authorize the use of foreign steel products if:

- a. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this contract, the cost is the value of the steel product delivered to the project; or
- b. The director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

.3 A Contractor who uses steel products in violation of this Clause may be subject to civil penalties pursuant to West Virginia Code § 5A-3-56.

§ 9.3.1.5 [reserved]

§ 9.3.1.6 WEST VIRGINIA JOBS ACT: Pursuant to West Virginia Code §21-1C-1 *et seq.*, every public improvement contract or subcontract let by a public authority shall contain the following language:

.1 DEFINITIONS:

- a. The term "construction project" means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract in an amount equal to or greater than \$500,000). The term "construction project" does not include temporary or emergency repairs;

- b. (1) The term "employee" means any person hired or permitted to perform hourly work for wages by a person, firm or corporation in the construction industry;

- (2) The term "employee" does not include:

(A) Bona fide employees of a public authority or individuals engaged in making temporary or emergency repairs;

(B) Bona fide independent contractors; or

(C) Salaried supervisory personnel necessary to assure efficient execution of the employee's work;

c. The term "employer" means any person, firm or corporation employing one or more employees on any public improvement and includes all contractors and subcontractors;

d. The term "local labor market" means every county in West Virginia and all counties bordering West Virginia that fall within seventy-five (75) miles of the border of West Virginia;

e. The term "public authority" means any officer, board, commission or agency of the State of West Virginia and its political subdivisions, including counties and municipalities. Further, the Economic Grant Committee, Economic Development Authority, Infrastructure and Jobs Development Council and School Building Authority shall be required to comply with the provisions of this Clause for loans, grants or bonds provided for public improvement construction projects; and

f. The term "public improvement" includes the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures that may be let to contract by a public authority, excluding improvements funded, in whole or in part, by federal funds.

.2 LOCAL LABOR MARKET UTILIZATION ON PUBLIC IMPROVEMENT CONSTRUCTION PROJECTS; WAIVER CERTIFICATES:

a. Employers shall hire at least seventy-five percent (75%) of employees for public improvement construction projects from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project.

b. Any employer unable to employ the minimum number of employees from the local labor market shall inform the nearest office of the Bureau of Employment Programs' Division of Employment Services of the number of qualified employees needed and provide a job description of the positions to be filled.

c. If, within three (3) business days following the placing of a job order, the Division is unable to refer any qualified

job applicants to the employer or refers less qualified job applicants than the number requested, then the Division shall issue a waiver to the employer stating the unavailability of applicants and shall permit the employer to fill any positions covered by the waiver from outside the local labor market. The waiver shall be either oral or in writing and shall be issued within the prescribed three (3) days. A waiver certificate shall be sent to both the employer for its permanent project records and to the public authority.

.3 SCOPE; REPORTING REQUIREMENTS:

a. Pursuant to West Virginia Code §21-1C-5, the West Virginia Jobs Act applies to expenditures for construction projects by any public authority for public improvements as defined by this Act.

b. For public improvement projects let pursuant to the West Virginia Jobs Act, the public authority shall file or require an employer as defined in Chapter 21, Article 1C, Section 2 to file with the Division of Labor copies of the waiver certificates and certified payrolls, pursuant to West Virginia Code, Chapter 21, Article 5A, or other comparable documents that include the number of employees, the county and state wherein the employees reside and their occupation.

c. The Division of Labor shall compile the information required by this section and submit it annually to the Joint Committee on Government and Finance by the fifteenth day of October. The joint committee may forward these reports to the Legislative Auditor to review and make comments regarding the usefulness of the information collected and to suggest changes to the division's method of reporting to ensure the information collected will prove useful in evaluating the effectiveness of the provisions of this Clause.

d. Each public authority has the duty to implement the reporting requirements of this Clause. Every public improvement contract or subcontract let by a public authority shall contain provisions conforming to the requirements of this Clause.

e. The Division of Labor is authorized to establish procedures for the efficient collection of data, collection of civil penalties prescribed in West Virginia Code §21-1C-6 and transmittal of data to the Joint Committee on Government and Finance.

.4 PENALTIES: Pursuant to West Virginia Code §21-1C-6, any employer who violates any provision of this Clause is subject to a civil penalty of one hundred dollars (\$100) per day of violation.

§ 9.3.1.7 PUBLIC IMPROVEMENT CONTRACTS & WEST VIRGINIA ALCOHOL and DRUG-FREE WORKPLACE ACT: The Contractor must, at all time during the term of this Agreement, be in compliance with West Virginia Code § 21-1D-1 *et seq.*, which provides, in part:

.1 DEFINITIONS:

- a. The term "construction" as used in this article, means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract the value of which contract is over \$100,000. The term "construction" does not include temporary or emergency repairs;
- b. The term "contractor" means any employer working on a public improvement without regard to whether they are serving as the prime or subcontractor to another;
- c. The term "employee" means a laborer, mechanic or other worker. For the purposes of this article, employee does not include those persons as are employed or hired directly by a public authority on a regular or temporary basis engaged exclusively in making temporary or emergency repairs. Furthermore, employee does not include those persons employed by a contractor who does not work in public improvement construction;
- d. The term "public authority", as used in this article, means any officer, board or commission or other agency of the State of West Virginia, its counties or municipalities or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement, including any institution supported, in whole or in part, by public funds of the State of West Virginia and this article applies to expenditures of these institutions made, in whole or in part, from public funds; and
- e. The term "public improvement", as used in this article, includes all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures upon which construction may be let to contract by the State of West Virginia, its counties or municipalities or any political subdivision thereof.

.2 No public authority may award a public improvement contract which is to be let to bid to a contractor unless the terms of the contract require the contractor and its subcontractors to implement and maintain a written drug-free workplace policy in compliance with this article and the contractor and its subcontractors provide a sworn statement

in writing, under the penalties of perjury, that they maintain a valid drug-free workplace policy in compliance with this article.

The public improvement contract shall provide for the following:

- (1) That the contractor implements its drug-free workplace policy;
- (2) Cancellation of the contract by the awarding public authority if the contractor:
 - (A) Fails to implement its drug-free workplace policy;
 - (B) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or
 - (C) Provides to the public authority false information regarding the contractor's drug-free workplace policy.

.3 Each contractor that submits a bid for the work must submit at the same time an affidavit that the contractor has a written plan for a drug-free workplace policy in compliance with West Virginia Code § 21-1D-5. A public improvement contract may not be awarded to a contractor who does not have a written plan for a drug-free workplace policy and who has not submitted that plan to the appropriate contracting authority in timely fashion. For subcontractors, compliance with this section may take place before their work on the public improvement is begun.

.4 In instances where a worker is required by law to follow United States Department of Transportation drug testing guidelines, no additional drug tests are required under this article.

.5 A clearly legible copy of the contractor's written drug-free workplace policy shall be kept posted in a prominent and easily accessible place at the public improvement construction site thereof by each contractor subject to the provisions of this article.

.6 Every contractor shall keep an accurate record showing the names, occupation and safety-sensitive status of all employees, in connection with the construction on the public improvement, and showing any drug tests or alcohol tests performed and employee education and supervisor training received, which record shall be open at all reasonable hours for inspection by the public authority which let the contract and its officers and agents. It is not necessary to preserve the record for a period longer than three (3) years after the termination of the contract.

.7 All drug testing information specifically related to individual employees is confidential and should be treated as such by anyone authorized to review or compile program records. Drug test results may not be used in a criminal proceeding without the employee's consent.

.6 No less than once per year, or upon completion of the project, every contractor shall provide a certified report to the public authority which let the contract. The report shall include:

- (1) Information to show that the education and training service to the requirements of section five [§ 21-1D-5] of this article was provided;
- (2) The name of the laboratory certified by the United States Department of Health and Human Services or its successor that performs the drug tests pursuant to this article;
- (3) The average number of employees in connection with the construction on the public improvement;
- (4) Drug test results for the following categories including the number of positive tests and the number of negative tests:
 - (A) Pre-employment and new hires;
 - (B) Reasonable suspicion;
 - (C) Post-accident;
 - (D) Random.

.9 PENALTIES:

a. Any contractor who violates any provision of this Act is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000; for the third or any subsequent offense within the preceding five years, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$25,000 and the contractor shall be excluded from bidding any additional new public improvement projects for a period of one year.

b. Any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this Act is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$250.

Add the following Sections to 9.3:

§ 9.3.4 Where materials and equipment are to be provided by the Owner under the Contract Documents, the Contractor shall notify the Owner in writing as to when materials and equipment are required on the project site in sufficient time to avoid delay in the Work.

§ 9.3.5 The Contractor shall employ labor on the Project or in connection with the Work, capable of working harmoniously with all trade crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts and implement policies and practices to minimize the likelihood of any strike, work stoppage or other labor disturbance. Except as specifically provided in the Contract Documents, Contractor shall not be entitled to any adjustment in the Contract sum or Contract time and shall be liable to the Owner for all damages suffered by the Owner occurring as a result of work stoppages, slowdowns, disputes, or strikes by the work force of or provided by Contractor or its subcontractors.

§ 9.4 WARRANTY

§ 9.4 Add the following sentence at the end of Section 9.4:

The Contractor agrees to assign to the Owner at time of Final Completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such a manner as to preserve any and all such warranties.

§ 9.7 ALLOWANCES

§ 9.7 Make the following changes to Section 9.7:

In the second sentence, delete "with reasonable promptness" and substitute "in sufficient time to avoid delay in the Work."

Add the following sentence at the end of Section 9.7:

The Contractor shall promptly submit to the Owner an itemized account of any expenditure by the Contractor of the Contract allowance in sufficient detail to allow the Owner to properly account for such expenditure.

§ 9.8 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 9.8.1 Make the following changes to Section 9.8.1:

In the first sentence, delete the word "promptly" and substitute "by the earliest reasonable date".

Add the following sentence to the end of Section 9.8.1:

The Contractor shall submit an updated construction schedule with each payment application, unless waived by the Owner.

Add the following Sections to 9.8:

§ 9.8.3 At any time after the first thirty (30) days of the Contract Time, if it is found that the project is two (2) weeks or more behind schedule, beyond approved time extensions, or if at any time during the last thirty (30) days of the scheduled Contract Time the Contractor is one (1) week or more behind schedule, the Contractor shall immediately submit a plan to the Owner describing how the Work will be placed back on schedule within the remaining Contract Time.

§ 9.8.4 If the Owner and the Architect determine that the performance of the Work during any stage of the construction schedule last approved by the Owner has not progressed or reached the level of completion required by the Contract Documents, the Owner will have the right to order the Contractor to take corrective measures (hereinafter referred to collectively as Extraordinary Measures) necessary to expedite the progress of the Work, including, without limitation: (1) working additional shifts or overtime; (2) supplying additional manpower, equipment and facilities; and (3) other similar measures. Such Extraordinary Measures shall continue until the progress of the Work complies with the last approved construction schedule. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule after allowing for approved extensions of Contract Time as provided elsewhere in this Agreement. The Contractor is not entitled to an adjustment in the Contract Sum in connection with any Extraordinary Measures required by the Owner. The Owner may exercise its rights under this Section as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with the construction schedule.

§ 9.12 CLEANING UP

§ 9.12 Add the following sentences at the end of Section 9.12:

If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and may withhold such reasonable costs as necessary for the fulfillment of the Contractor's obligation under this Section 9.12. If the reasonable costs of such cleaning exceed the Contract Sum then due the Contractor, the Contractor shall reimburse the Owner the difference within thirty (30) consecutive calendar days of the Owner's written request. In order to achieve Substantial Completion, as defined by Section 15.4, for any portion of the Work, the Contractor must have the area where the Work is located fully cleaned and all materials and/or debris removed from site. The Certificate of Substantial Completion will not be issued until the Contractor has met this obligation.

ARTICLE 10 ARCHITECT

Make the following changes to Article 10:

§ 10.1 In the first sentence of Section 10.1 after the word Architect add ", unless otherwise indicated by the Owner,".

§ 10.2 In the first sentence of Section 10.2 strike the word "generally."

§ 10.3 In the first sentence of Section 10.3 strike the word "reasonably."

§ 10.4 Add the following sentence at the end of Section 10.4:

The Architect upon receipt of an Application for Payment from the Contractor shall either review and certify such amounts due for payment or return such Application for Payment to the Contractor for correction(s) within five (5) consecutive business days of receipt.

§ 10.6 Delete Section 10.6 in its entirety and substitute the following:

The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents.

ARTICLE 13 CHANGES IN THE WORK

§ 13.2 Make the following changes to Section 13.2:

Delete the second and third sentences of Section 13.2 in their entirety and substitute the following:

Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment provided these amounts have been added to the Contract by Change Order and a purchase order has been issued for the Change Order.

Add the following sentence at the end of Section 13.2:

The Change Order shall be issued by the Owner within 60 days following such agreement.

Add the following Sections to Article 13:

§ 13.5 The allowance for overhead and profit included in the total cost to the Owner for changes in the Work pursuant to §13.2 shall be based on the following schedule:

.1 For the Contractor, for any Work performed by the Contractor's own forces, fifteen percent (15%) of the cost.

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, ten percent (10%) of the amount due the Subcontractor.

.3 For each Subcontractor or Sub-Subcontractor involved, for any Work performed by that Subcontractor's own forces, fifteen percent (15%) of the cost.

.4. For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, ten percent (10%) of the amount due the Sub-subcontractor.

.5 Cost to which overhead and profit is to be applied is the cost of materials, including sales, use or similar taxes if applicable under West Virginia Code, and the cost of delivery; the cost of labor, including fringe benefits required by custom or agreement, social security, old age and unemployment insurance and worker's compensation insurance; the rental costs of equipment and machinery, exclusive of hand tools; costs of premiums for all bonds and insurance; and additional costs of supervision and field office personnel directly attributable to the change. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the Change Order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the allowance for Overhead and Profit. Hand tools are defined as equipment with a value of \$1,000 or less. For Contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing Change Order proposals shall be not more than the monthly rate listed in the most current publication of The AED Green Book divided by 176 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the Change Order work.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, material, equipment and Subcontractors. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable.) Where major cost items are Subcontracts, they shall also be itemized as prescribed above. In no case will a change involving over \$10,000 be approved without such an itemization.

.7 Local Business and Occupation Taxes, if applicable, shall be calculated on the cost of the Work, overhead and profit.

.8 Overhead and profit shall not be calculated on changes in the Work involving unit prices. Unit prices are to have overhead and profit included in the price quoted.

.9 For revisions to the Work requested by the Owner or Architect and for substitutions requested by the Contractor and approved by the Owner and Architect, overhead and profit shall be limited to the net difference between the cost of the specified Work and the cost of the revised or substituted Work.

§ 13.6 A written Change Order as defined under this Article 13 shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to general conditions, all direct or indirect costs associated with such change and any and all adjustment to the Contract Sum and Contract Time.

ARTICLE 14 **TIME**

§ 14.5 In the first sentence, delete "unusual delay in deliveries,".

ARTICLE 15 **PAYMENTS AND COMPLETION**

§ 15.1 APPLICATIONS FOR PAYMENT

§ 15.1.1 Make the following change to Section 15.1.1:

In the first sentence add "and the Owner" after the first reference to the Architect and add "and other required documents" after the words "schedule of values." In the second sentence add "or the Owner" after Architect.

Add the following sentence at the end of Section 15.1.1:

Such applications may include requests for payment on account of changes in the Work authorized by Construction Change Directives and Change Orders only after a purchase order has been issued for the Work affected.

§ 15.1.2 Delete Section 15.1.2 in its entirety.

§ 15.4 SUBSTANTIAL COMPLETION

§ 15.4.4 Add the following clause to Section 15.4.4:

§15.4.4.1 The payment of retainage shall be sufficient to increase the total payments to ninety-five percent (95%) for the Work or designated portion thereof being accepted as Substantially Complete, less any amounts as the Architect shall determine for any Work that is not complete, not in accordance with the Contract Documents, or for unsettled claims.

§ 15.5 FINAL COMPLETION AND FINAL PAYMENT

§ 15.5.2 Delete Section 15.5.2 in its entirety and substitute the following:

§ 15.5.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release in full covering all labor, materials and equipment satisfactory to the Owner. In addition, the Contractor shall present evidence of the payment or satisfaction of all applicable State and local taxes. Unless and to the extent final completion is delayed through no fault of the Contractor, the Owner shall be under no obligation to increase payments above ninety-five percent (95%) until final completion of the Work is Certified by the Architect.

§ 16.2 HAZARDOUS MATERIALS

§ 16.2.2 Delete Section 16.2.2 in its entirety.

§ 16.2.3 Make the following change to Section 16.2.3:

Delete "indemnify" and substitute "reimburse."

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Delete the last sentence of Section 17.1 in its entirety and substitute the following:

The Owner shall require the Contractor to purchase and maintain liability insurance coverage, primary to the Owner's coverage under Section 17.2. Owner, Architect, and Architect's Consultants shall be named as additional insureds on Contractor's Commercial General Liability Insurance specified for operations and completed operations, but only with respect for bodily injury, property damage or personal and advertising injury to the extent caused by the negligent acts or omissions of the Contractor, or those acting on the Contractor's behalf, in the performance of the Contractor's Work for the Owner at the Worksite. The Contractor and all Subcontractors shall purchase and maintain Workers' Compensation coverage as required by West Virginia Code, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project. All such policies shall include coverage as described in West Virginia Code §23-4-2 (Mandolidis).

Add the following Section to Section 17.1:

§ 17.1.1 The insurance coverages required by Section 17.1 shall be written for not less than the minimum limits (or greater if required by law) set forth in the sample Certificate of Insurance following these Supplementary Conditions.

§ 17.3 PROPERTY INSURANCE

§ 17.3.1 Make the following changes to Section 17.3.1:

At the beginning of the first sentence, delete "Unless otherwise provided, the Owner" and substitute "The Contractor".

Add the following sentences at the end of this Section:

The form of policy for this coverage shall be Completed Value. If the Owner is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall bear all reasonable costs properly attributable thereto.

§ 17.3.2 Make the following change to Section 17.3.2:

Delete the first sentence in its entirety and substitute "The Contractor shall file a copy of each policy with the Owner before an exposure to loss may occur."

At the end of the second sentence, delete the word "Contractor" and substitute "Owner."

§ 17.3.3 Make the following change in Section 17.3.3:

At the end of the first sentence, delete "Owner" and substitute "Contractor".

§ 17.3.4 Make the following changes in Section 17.3.4:

In the first sentence, substitute "Contractor" for "Owner" each time the latter word appears.

§ 17.4 PERFORMANCE BOND AND PAYMENT BOND

§ 17.4.1 Add the following clauses to Section 17.4.1:

§ 17.4.1.1 The Contractor shall provide, at the Contractor's expense, a Performance Bond and a Labor and Material Payment Bond for 100% of the Contract Sum and, if applicable, a two-year roofing Maintenance Bond for the full value of the roofing system. The surety company must be one with which the Owner has no reasonable objection and it must be authorized to transact surety insurance business in the State of West Virginia.

§ 17.4.1.2 An attorney-in-fact who executes the bonds on behalf of the surety shall affix thereto a certified and current copy of power of attorney.

§ 17.4.1.3 The bonds shall be issued on State of West Virginia forms. The Contractor shall deliver the required bonds and all other contract documents to the Owner not later than 15 days following receipt of the Owner's notice of intent to award a contract.

Add the following Section to Article 17:

§ 17.5 WAGE BOND

The Contractor, if engaged in construction work in West Virginia less than five consecutive years preceding the date of the Bid, shall post a wage bond with the West Virginia Department of Labor.

**ARTICLE 19
MISCELLANEOUS PROVISIONS**

§ 19.4 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ 19.4 Delete Section 19.4 in its entirety and substitute the following:

§ 19.4 Any applicable statute of limitations shall be in accordance with West Virginia Code.

Add the following Sections to Article 19:

§ 19.5 WORKERS COMPENSATION

The Contractor shall provide proof of compliance with West Virginia Worker's Compensation laws and regulations.

§ 19.6 CONTRACTOR'S LICENSE

§ 19.5.1 West Virginia Code § 21-11-2 requires that all persons desiring to perform contracting work in West Virginia shall be duly licensed. The West Virginia Contractor's Licensing Board is empowered to issue a contractor's license.

§ 19.5.2 West Virginia Code § 21-11-11 requires any prospective Bidder to include the Bidder's contractor's license number on its Bid. The successful Bidder will be required to furnish a copy of its contractor's license in a classification appropriate to the Work prior to issuance of a purchase order/contract.

**ARTICLE 20
TERMINATION OF THE CONTRACT**

§ 20.1 TERMINATION BY THE CONTRACTOR

§ 20.1 Make the following changes in Section 20.1:

Delete "and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages" at the end of the sentence.

Add the following sentence at the end of Section 20.1:

In such event, the Contractor shall be paid for all Work performed in accordance with the Contract Documents, for reasonable and proven termination expenses and a reasonable allowance for overhead and profit. However, such payment, exclusive of termination expenses, shall not exceed the Contract Sum as

reduced by other payments made to the Contractor and further reduced by the value of Work as yet not completed. The Contractor shall be entitled to reasonable overhead, but not profit, on Work not performed.

§ 20.2 TERMINATION BY THE OWNER FOR CAUSE

§ 20.2.4 Delete Section 20.2.4 in its entirety and substitute the following:

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall not be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.3 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 20.3 Delete Section 20.3 in its entirety and substitute the following:

§ 20.3 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause upon thirty days written notice. In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment from the Owner on the same basis provided in Section 20.1 above.

Add the following Section to Article 20:

§ 20.4 FISCAL YEAR FUNDING

§ 20.4 Work performed under this Contract is to continue in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this Work. In the event funds are not appropriated for this Work, this Contract becomes of no effect and is null and void after June 30.

**ARTICLE 21
CLAIMS AND DISPUTES**

Make the following changes to Article 21:

§ 21.1 Delete "binding dispute resolution" and substitute "litigation in a court of competent jurisdiction."

§ 21.2 Delete Section 21.2 in its entirety.

§ 21.3 Delete Section 21.3 in its entirety and substitute the following:

§ 21.3 The parties shall endeavor to resolve their disputes by non-binding mediation which, unless the parties mutually agree

otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.

§ 21.4 Delete Section 21.4 in its entirety.

§ 21.5 Delete Section 21.5 in its entirety.

§ 21.6 Delete Section 21.6 in its entirety.

§ 21.7 Delete Section 21.7 in its entirety and substitute the following:

§21.7 SETTLEMENT OF CLAIMS

§21.7.1 The Constitution of West Virginia grants the State sovereign immunity from any and all Claims against the public treasury. This immunity applies and is extended to all agencies of the State, including the Owner. It shall be in full force and effect as it relates to this Contract. The West Virginia Legislature, recognizing that certain Claims against the State may constitute a moral obligation of the State and should be heard, has established the West Virginia Court of Claims for this purpose. Notwithstanding any provision to the contrary in the Contract Documents, all references to arbitration are hereby deleted and all Claims of the Contractor for monetary relief, and only of the Contractor, arising out of or related to this Contract shall be decided by the West Virginia Court of Claims. The following Sections have been rewritten to bring them into conformance with the foregoing.

§21.7.2 Claims by the Owner may be brought against the Contractor in the Circuit Court of Kanawha County, West Virginia, or in any other court that has jurisdiction, as the Owner may elect.

§21.7.3 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for herein shall, within 30 days after submission of the decision by the Initial Decision Maker, be settled for the Contractor by the West Virginia Court of Claims or, for the Owner, by the Circuit Court of Kanawha County or any other court of jurisdiction as the Owner may elect.

§21.7.4 Notice of such action shall be filed in writing with the other party to the Contract, and a copy of such notice shall be filed with the Initial Decision Maker and the Architect, if applicable.

§21.7.5 Pending final resolution of a Claim, unless otherwise agreed to in writing by the Owner and Contractor, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§21.7.6 Claims shall be made within the time limits specified in Section 21.1.

§21.7.7 The party filing a Claim must assert in the demand all Claims then known to that party on which action is permitted.

Add the following Article 22:

ARTICLE 22 EQUAL OPPORTUNITY

§ 22.1 COMPLIANCE WITH REGULATIONS UNDER TITLE VI OF THE FEDERAL CIVIL RIGHTS ACT OF 1964 AND EXECUTIVE ORDER 65-2 BY THE GOVERNOR OF WEST VIRGINIA DATED DECEMBER 15, 1965

§ 22.1.1 The Contractor agrees that it will comply with Title VI of the Federal Civil Rights Act of 1964 (P.L. 88352) and the regulations of the State of West Virginia, the end that no person in the State, or in the United States, shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity for which the Contractor receives any recompense or other consideration of value, either directly or indirectly from the State; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this Agreement.

§ 22.1.2 If any real property or structure thereon is provided or improved, this assurance shall obligate the Contractor, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which any State payment is extended or for another purpose involving the provisions of similar services or benefits. If any other goods or services are so provided, this assurance shall obligate the Contractor for the period during which it supplies such goods or services.

§ 22.1.3 The Contractor recognizes and agrees that such right to provide property, goods or services to the State will be extended in reliance on the representations and agreements made in assurance, and that the State shall have the right to seek judicial enforcement of this assurance. This is binding on the Contractor, its successors, transferee, and assignee, or any authorized person on behalf of the Contractor.

**END OF SUPPLEMENTARY CONDITIONS TO AIA DOCUMENT
A107 - 2007**

Any provisions of the Contract Documents that conflict with these Supplementary Conditions shall be null and void unless they have been approved in writing by the applicable State purchasing officer and the Attorney General, and are clearly identified as such in the bid documents.

The Owner and Contractor hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF, the Owner and Contractor have entered into this Agreement as of the effective date as stated in the A107-2007 Agreement.

Owner:

Contractor:

By:

By:

Title:

Title:

Date:

Date:

APPROVED AS TO FORM THIS 1st DAY OF June, 2016

BY:

J. Robert Rishie
WEST VIRGINIA STATE ATTORNEY GENERAL



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

PRODUCER INSURANCE AGENCY'S NAME AND ADDRESS	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED CONTRACTOR'S NAME AND ADDRESS	INSURERS AFFORDING COVERAGE	NAIC #
	INSURER A: INSURER'S NAME	
	INSURER B: INSURER'S NAME	
	INSURER C: INSURER'S NAME	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPIOP AGG \$	
	A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
			GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC AGG \$
			B	EXCESS / UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$			
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under SPECIAL PROVISIONS below					<input checked="" type="checkbox"/> WC STATU- TORY LIMITS <input type="checkbox"/> OTH- ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Employers liability includes coverage for W. Va. Code §23-4-2 (Mandolidis). Owner, Architect and Architect's Consultants are to be named as additional insureds. (Insert project's name and address)

CERTIFICATE HOLDER

STATE AGENCY'S NAME AND ADDRESS

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ACORDTM CERTIFICATE OF PROPERTY INSURANCE		DATE
PRODUCER INSURANCE AGENCY'S NAME AND ADDRESS	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. COMPANIES AFFORDING COVERAGE COMPANY A INSURER'S NAME COMPANY B COMPANY C COMPANY D	
INSURED CONTRACTOR'S NAME AND ADDRESS		

COVERAGES THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	COVERED PROPERTY	LIMITS
	<input type="checkbox"/> PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPECIAL <input type="checkbox"/> EARTHQUAKE <input type="checkbox"/> FLOOD				<input type="checkbox"/> BUILDING <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> EXTRA EXPENSE <input type="checkbox"/> BLANKET BUILDING <input type="checkbox"/> BLANKET PERS PROP <input type="checkbox"/> BLANKET BLDG & PP	\$ \$ \$ \$ \$ \$ \$
A	<input checked="" type="checkbox"/> INLAND MARINE TYPE OF POLICY Inst/Builder's Risk CAUSES OF LOSS <input type="checkbox"/> NAMED PERILS <input type="checkbox"/> OTHER	(if applicable)			<input checked="" type="checkbox"/> BUILDING <input checked="" type="checkbox"/> TRANSIT <input checked="" type="checkbox"/> OFF-SITE <input type="checkbox"/> STORAGE	\$ \$ \$ \$
	<input type="checkbox"/> CRIME TYPE OF POLICY					\$ \$ \$
	<input type="checkbox"/> BOILER & MACHINERY					\$ \$
	<input type="checkbox"/> OTHER					
LOCATION OF PREMISES/DESCRIPTION OF PROPERTY PROJECT NAME AND ADDRESS						
SPECIAL CONDITIONS/OTHER COVERAGES Owner is to be named as additional insured.						

CERTIFICATE HOLDER STATE AGENCY'S NAME AND ADDRESS	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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