



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

# Request for Quotation

RFQ NUMBER  
**PTR07036**

PAGE  
**1**

ADDRESS CORRESPONDENCE TO ATTENTION OF:  
**BUTCH CHITTUM**  
**304-558-8806**

VENDOR

RFQ COPY  
 TYPE NAME/ADDRESS HERE

SHIP TO

DIVISION OF PUBLIC TRANSIT  
 CENTRAL WV TRANSIT AUTHORITY

210 NORTH 4TH STREET  
 CLARKSBURG, WV  
 26301 304-623-6002

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
06/13/2007				

BID OPENING DATE: **07/17/2007** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	EA		770-45		
<p>ROOF REPLACEMENT PROJECT FOR CENTRAL WEST VIRGINIA</p> <p>ROOF REPLACEMENT PROJECT FOR CENTRAL WEST VIRGINIA TRANSIT AUTHORITY IN CLARKSBURG, WV, PER THE ATTACHED SPECIFICATIONS.</p> <p>A MANDATORY PRE-BID MEETING WILL BE HELD AT 1:30 P.M. ON 06/27/2007 AT WV DIVISION OF PUBLIC TRANSIT, 208 NORTH 4TH STREET, CLARKSBURG, WV 26301. ALL INTERESTED BIDDERS ARE REQUIRED TO BE PRESENT AT THIS MEETING. FAILURE TO ATTEND THE MANDATORY PRE-BID MEETING SHALL AUTOMATICALLY RESULT IN DISQUALIFICATION. NO ONE PERSON CAN REPRESENT MORE THAN ONE VENDOR.</p> <p>INQUIRIES:</p> <p>WRITTEN QUESTIONS WILL BE ACCEPTED THROUGH CLOSE OF BUSINESS ON 06/28/2007. QUESTIONS MAY BE SENT VIA USPS, FAX COURIER OR EMAIL. IN ORDER TO ASSURE NO VENDOR RECEIVES AN UNFAIR ADVANTAGE, NO SUBSTANTIVE QUESTIONS WILL BE ANSWERED VERBALLY. IF POSSIBLE EMAIL QUESTIONS ARE PREFERRED. ADDRESS INQUIRIES TO:</p> <p>BUTCH CHITTUM          DEPARTMENT OF ADMINISTRATION          PURCHASING DIVISION          2019 WASHINGTON STREET, EAST          CHARLESTON, WV 25305          FAX: 304-558-4115          EMAIL: BCHITTUM@WVADMIN.GOV</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

**GENERAL TERMS & CONDITIONS  
REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)**

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. All quotations are governed by the *West Virginia Code* and the *Legislative Rules* of the Purchasing Division.
4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125.00 registration fee.
5. All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the term of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
6. Payment may only be made after the delivery and acceptance of goods or services.
7. Interest may be paid for late payment in accordance with the *West Virginia Code*.
8. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
9. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
11. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this contract is automatically null and void, and is terminated without further order.
14. **HIPAA Business Associate Addendum** - The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.

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**INSTRUCTIONS TO BIDDERS**

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in cases of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **BID SUBMISSION:** All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications.

**SIGNED BID TO:**

Department of Administration  
Purchasing Division  
2019 Washington Street East  
Post Office Box 50130  
Charleston, WV 25305-0130



State of West Virginia  
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DIVISION OF PUBLIC TRANSIT  
 CENTRAL WV TRANSIT AUTHORITY

210 NORTH 4TH STREET  
 CLARKSBURG, WV  
 26301 304-623-6002

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
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<p><b>EXHIBIT 5</b></p> <p><b>NOTICE TO PROCEED: THIS CONTRACT IS TO BE PERFORMED WITHIN 90 CALENDAR DAYS AFTER THE NOTICE TO PROCEED IS RECEIVED. UNLESS OTHERWISE SPECIFIED, THE FULLY EXECUTED PURCHASE ORDER WILL BE CONSIDERED NOTICE TO PROCEED.</b></p> <p><b>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE MATERIALS OR WORKMANSHIP SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM WITH THE SPECIFICATIONS OF THE BID AND CONTRACT HERE IN.</b></p> <p><b>WAGE RATES: THE CONTRACTOR OR SUBCONTRACTOR SHALL PAY THE HIGHER OF THE U.S. DEPARTMENT OF LABOR MINIMUM WAGE RATES AS ESTABLISHED FOR HARRISON COUNTY, PURSUANT TO WEST VIRGINIA CODE 21-5A, ET, SEQ. (PREVAILING WAGE RATES APPLY TO THIS PROJECT)</b></p> <p><b>ARBITRATION: ANY REFERENCES MADE TO ARBITRATION OR INTEREST FOR PAYMENTS DUE (EXCEPT FOR ANY INTEREST REQUIRED BY STATE LAW) CONTAINED IN THIS CONTRACT OR IN ANY AMERICAN INSTITUTE OF ARCHITECTS DOCUMENTS PERTAINING TO THIS CONTRACT ARE HEREBY DELETED.</b></p> <p><b>WORKERS' COMPENSATION: VENDOR IS REQUIRED TO PROVIDE A CERTIFICATE FROM WORKERS' COMPENSATION IF SUCCESSFUL.</b></p> <p><b>ALL OF THE ITEMS CHECKED BELOW WILL BE A REQUIREMENT OF THIS CONTRACT:</b></p> <p><b>(XX) INSURANCE: SUCCESSFUL VENDOR SHALL FURNISH PROOF OF COMMERCIAL GENERAL LIABILITY INSURANCE PRIOR TO ISSUANCE OF CONTRACT. UNLESS OTHERWISE SPECIFIED IN</b></p>						

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<p>THE BID DOCUMENTS, THE MINIMUM AMOUNT OF INSURANCE COVERAGE REQUIRED IS \$1,000,000.</p> <p>(XX) BUILDERS RISK INSURANCE: SUCCESSFUL VENDOR SHALL FURNISH PROOF OF BUILDERS RISK - ALL RISK INSURANCE IN AN AMOUNT EQUAL TO 100% OF THE AMOUNT OF THE CONTRACT.</p> <p>(XX) BONDS: FIVE PERCENT (5%) OF THE TOTAL AMOUNT OF THE BID PAYABLE TO THE STATE OF WEST VIRGINIA, SHALL BE SUBMITTED WITH EACH BID AS A BID BOND. THE SUCCESSFUL BIDDER SHALL ALSO FURNISH A PERFORMANCE BOND AND LABOR/MATERIAL BOND FOR 100% OF THE AMOUNT OF THE CONTRACT. BONDS MAY BE PROVIDED IN THE FORM OF A CERTIFIED CHECK, IRREVOCABLE LETTER OF CREDIT, OR BOND FURNISHED BY A SOLVENT SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THE STATE OF WEST VIRGINIA. A LETTER OF CREDIT SUBMITTED IN LIEU OF A PERFORMANCE AND LABOR &amp; MATERIAL BOND WILL ONLY BE ALLOWED FOR PROJECTS UNDER \$100,000. PERSONAL OR BUSINESS CHECKS ARE NOT ACCEPTABLE IN LIEU OF THE 5% BID BOND, PERFORMANCE BOND, OR LABOR AND MATERIAL BOND.</p> <p>(XX) MAINTENANCE BOND: A TWO (2) YEAR MAINTENANCE BOND COVERING THE ROOFING SYSTEM WILL BE A REQUIREMENT OF THE SUCCESSFUL VENDOR.</p> <p>REV. 11/00</p> <p>EXHIBIT 7</p> <p>DOMESTIC ALUMINUM, GLASS &amp; STEEL IN PUBLIC WORKS PROJECTS</p> <p>IN ACCORDANCE WITH WEST VIRGINIA CODE 5-19-1 ET., SEQ., EVERY CONTRACT FOR CONSTRUCTION, RECONSTRUCTION,</p>						

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LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>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 PUBLIC WORKS PROJECTS.</p> <p>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 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 IN A "SUBSTANTIAL LABOR SURPLUS AREA", AS DEFINED BY THE UNITED STATES DEPARTMENT OF LABOR, FOREIGN PRODUCTS MAY BE SUPPLIED ONLY IF DOMESTIC PRODUCTS ARE 30% OR MORE HIGHER IN PRICE THAN THE FOREIGN MADE PRODUCTS.</p> <p>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 DOMESTIC PRODUCTS, THE SPENDING OFFICE MAY REQUEST, IN WRITING, A REEVALUATION AND REDUCTION IN THE LOWEST BID FOR SUCH DOMESTIC PRODUCTS ALL VENDORS MUST INDICATE IN THEIR BID IF THEY ARE SUPPLYING FOREIGN ALUMINUM, GLASS OR STEEL.</p> <p>REV. 3/88</p>						

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LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
<p><b>ADDENDUM ACKNOWLEDGEMENT</b></p> <p>I HEREBY ACKNOWLEDGE RECEIPT OF THE FOLLOWING CHECKED ADDENDUM(S) AND HAVE MADE THE NECESSARY REVISIONS TO MY PROPOSAL, PLANS AND/OR SPECIFICATION, ETC.</p> <p>ADDENDUM NOS.:</p> <p>NO. 1 .....</p> <p>NO. 2 .....</p> <p>NO. 3 .....</p> <p>NO. 4 .....</p> <p>NO. 5 .....</p> <p>I UNDERSTAND THAT FAILURE TO CONFIRM THE RECEIPT OF THE ADDENDUM(S) MAY BE CAUSE FOR REJECTION OF THE BIDS.</p> <p>.....SIGNATURE</p> <p>.....COMPANY</p> <p>.....DATE</p> <p>REV. 11/96</p> <p><b>CONTRACTORS LICENSE</b></p> <p>WEST VIRGINIA STATE CODE 21-11-2 REQUIRES THAT ALL PERSONS DESIRING TO PERFORM CONTRACTING WORK IN THIS</p>						

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<p>STATE MUST BE LICENSED. THE WEST VIRGINIA CONTRACTORS LICENSING BOARD IS EMPOWERED TO ISSUE THE CONTRACTORS LICENSE. APPLICATIONS FOR A CONTRACTORS LICENSE MAY BE MADE BY CONTACTING THE WEST VIRGINIA DIVISION OF LABOR CAPITOL COMPLEX, BUILDING 3, ROOM 319, CHARLESTON, WV 25305. TELEPHONE: (304) 558-7890.</p> <p>WEST VIRGINIA STATE CODE 21-11-11 REQUIRES ANY PROSPECTIVE BIDDER TO INCLUDE THE CONTRACTORS LICENSE NUMBER ON THEIR BID.</p> <p>BIDDER TO COMPLETE:</p> <p>CONTRACTORS NAME: .....</p> <p>CONTRACTORS LICENSE NO.: .....</p> <p>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FURNISH A COPY OF THEIR CONTRACTORS LICENSE PRIOR TO ISSUANCE OF A PURCHASE ORDER/CONTRACT</p> <p style="text-align: center;">APPLICABLE LAW</p> <p>THE WEST VIRGINIA STATE CODE, PURCHASING DIVISION RULE AND REGULATIONS, AND THE INFORMATION PROVIDED IN THE "REQUEST FOR QUOTATION" ISSUED BY THE PURCHASING DIVISION IS THE SOLE AUTHORITY GOVERNING THIS PROCUREMENT.</p> <p>ANY INFORMATION PROVIDED IN SPECIFICATION MANUALS, OR ANY OTHER SOURCE, VERBAL OR WRITTEN, WHICH CONTRADICTS OR ALTERS THE INFORMATION PROVIDED FROM THE SOURCES AS DESCRIBED IN THE ABOVE PARAGRAPH IS VOID AND OF NO EFFECT.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES</p>						

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DIVISION OF PUBLIC TRANSIT  
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<p>FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER ORDER.</p> <p>REV. 1/2005</p> <p style="text-align: center;">NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p style="padding-left: 40px;">DEPARTMENT OF ADMINISTRATION            PURCHASING DIVISION            BUILDING 15            2019 WASHINGTON STREET, EAST            CHARLESTON, WV 25305-0130</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER: BUTCH CHITTUM 44</p> <p>REQ. NO.: PTR07036</p> <p>BID OPENING DATE: 07/17/2007</p> <p>BID OPENING TIME: 1:30 P.M.</p> <p>PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:</p> <p style="text-align: center;">-----</p>						

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LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
PLEASE PRINT OR TYPE NAME OF PERSON TO CONTACT CONCERNING THIS QUOTE: -----						
***** THIS IS THE END OF RFQ PTR07036 ***** TOTAL: _____						

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## INVITATION TO BID

The West Virginia Division of Public Transit invites proposals to provide all work, including but not limited to labor, material, equipment supplies, and transportation for roof repair and a replacement work at the existing bus maintenance facility. Bids are to be labeled as:

CENTRA  
 Bus Maintenance Facility  
 Membrane Roof Replacement Project  
 Clarksburg, West Virginia

All Bids must be submitted in accordance with the Bidding Documents issued by the Architect and the Request for Quotations PTR07036 issued by the West Virginia Department of Administration, Purchasing Division. Bidding Documents may be obtained from:

Freelance Technical Associates, Inc.  
 207 Fairmont Avenue  
 Fairmont, West Virginia 26554  
 Phone: (304) 366-6288

WV Purchasing Division  
 Mr. Butch Chittum, Buyer Contact  
 2019 Washington Street, East, Building 15  
 Charleston, WV 25305  
 Phone: (304) 558-8806

Documents may be purchased at \$ 55.00, which is NONREFUNDABLE. Bidders and material suppliers may procure additional sets at actual cost. Only complete sets will be issued.

**A mandatory pre-bid meeting is scheduled for:**

Time: 1:30 p.m.  
 Date: June 27, 2007  
 Place: Central West Virginia Transit Authority  
 208 North 4<sup>th</sup> Ave.  
 Clarksburg, WV 26554  
 (304) 623-6002

For directions to the mandatory pre-bid meeting, contact Danny Bainbridge, President, Freelance Technical Associates, Inc. at (304) 366-6288. Failure to attend the mandatory pre-bid meeting shall disqualify Contractor from bidding.

Sealed Bids will be received by the **Department of Administration, Purchasing Division; 2019 Washington Street, East; P. O. Box 50130; Charleston, West Virginia 25305-0130** until **1:30 p.m. on July 17, 2007**, in accordance with the Instructions to Bidders, the Supplementary Instructions to Bidders and Request for Quotations. Bid prices shall remain in effect for 90 days.

To provide all work including but not limited to labor, material, equipment, supplies and transportation for the replacement of a roof on the existing transit facility for the West Virginia Division of Public Transit c/o Central West Virginia Transit Authority which is located in Clarksburg, WV.

**A Mandatory Pre-Bid Conference** shall be held at 208 North 4<sup>th</sup> Street in Clarksburg, WV on June 27, 2007 at 1:30pm.

Vendor's can call Ms. BJ Rollins, Manager at (304) 623-6002 for directions to the site.

**FAILURE TO ATTEND THE MANDATORY PRE-BID CONFERENCE SHALL DISQUALIFY CONTRACTOR FROM BIDDING.**



ALL WORK MUST BE COMPLETED IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS PREPARED BY THE ARCHITECT AND PURCHASE ORDER ISSUED BY THE DEPARTMENT OF ADMINISTRATION, PURCHASING DIVISION.

**PROJECT ARCHITECT**

Danny Bainbridge  
Freelance Technical Associates, Inc.  
207 Fairmont Avenue  
Fairmont, WV 26554  
(304) 366-6288

**THERE IS A \$55.00 NON-REFUNDABLE FEE FOR PLANS AND SPECIFICATIONS. BIDDERS AND MATERIAL SUPPLIERS MAY PROCURE ADDITIONAL SETS AT ACTUAL COST. ONLY COMPLETE SETS WILL BE ISSUED.**

**LIQUIDATED DAMAGES**

LIQUIDATED DAMAGES SHALL BE ACCESSED AT A RATE OF \$200.00 PER DAY IF SUBSTANTIAL COMPLETION IS NOT OBTAINED WITHIN 90 CALENDAR DAYS OF THE CONTRACTOR'S PROCEED DATE AND LIQUIDATED DAMAGES SHALL BE ACCESSED AT A RATE OF \$100.00 PER DAY IF FINAL COMPLETION IS NOT ACHIEVED WITHIN 30 CALENDAR DAYS OF SUBSTANTIAL COMPLETION.


**AIA<sup>®</sup> Document A201<sup>™</sup> – 1997**
***General Conditions of the Contract for Construction***

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

This document has been approved and endorsed by The Associated General Contractors of America

**TABLE OF ARTICLES**

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- 4      **ADMINISTRATION OF THE CONTRACT**
- 5      **SUBCONTRACTORS**
- 6      **CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**
- 7      **CHANGES IN THE WORK**
- 8      **TIME**
- 9      **PAYMENTS AND COMPLETION**
- 10     **PROTECTION OF PERSONS AND PROPERTY**
- 11     **INSURANCE AND BONDS**
- 12     **UNCOVERING AND CORRECTION OF WORK**
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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter 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 other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

#### § 1.1.2 THE CONTRACT

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

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or 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 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

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

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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

**§ 1.3 CAPITALIZATION**

§ 1.3.1 Terms capitalized in these General Conditions include those which 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**

§ 1.4.1 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 EXECUTION OF CONTRACT DOCUMENTS**

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

§ 1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

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

§ 1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier 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. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. 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' copyrights or other reserved rights.

**ARTICLE 2 OWNER****§ 2.1 GENERAL**

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

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

§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or

continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.2** Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

**§ 2.2.4** Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

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

**§ 2.3.1** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

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

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

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

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

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

**§ 3.2.1** Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other 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 construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require.

**§ 3.2.2** Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but 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 Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.

**§ 3.2.3** If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

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

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

### **§ 3.4 LABOR AND MATERIALS**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**§ 3.5 WARRANTY**

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.6 TAXES**

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

**§ 3.7 PERMITS, FEES AND NOTICES**

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

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

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

§ 3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.8 ALLOWANCES**

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

**§ 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. Important

communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**§ 3.10.2** The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

**§ 3.11.1** The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

### **§ 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 which 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. 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 which 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 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. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

**§ 3.12.6** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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



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

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

**§ 3.12.10** The Contractor shall not be required to provide professional services which 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 or approvals performed 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 or design criteria required by the Contract Documents.

### **§ 3.13 USE OF SITE**

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 CUTTING AND PATCHING**

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

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

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

**§ 3.16 ACCESS TO WORK**

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

**§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

**§ 3.17.1** 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 and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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

**ARTICLE 4 ADMINISTRATION OF THE CONTRACT****§ 4.1 ARCHITECT**

**§ 4.1.1** The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

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

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

**§ 4.2 ARCHITECT'S 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 (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 4.2.2** The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and

deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible 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** The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 4.2.4** Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

**§ 4.2.6** The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, 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.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will 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, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. 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 initial 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 so 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.

### **§ 4.3 CLAIMS AND DISPUTES**

**§ 4.3.1** Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**§ 4.3.2** Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

**§ 4.3.3** Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 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.

**§ 4.3.4** Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed 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 activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if 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 so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

**§ 4.3.5** Claims for Additional Cost. If the Contractor wishes to make 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 10.6.

**§ 4.3.6** If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

**§ 4.3.7 Claims for Additional Time**

**§ 4.3.7.1** If the Contractor wishes to make 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.

**§ 4.3.7.2** 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.

**§ 4.3.8 Injury or Damage to Person or Property.** If either party to the Contract 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.

**§ 4.3.9** 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.

**§ 4.3.10 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 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES**

**§ 4.4.1 Decision of Architect.** Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 4.4.2** The Architect will review Claims and within ten days of the receipt of the 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 Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

**§ 4.4.3** In evaluating Claims, the Architect 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 Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 4.4.4** If the Architect 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 provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

**§ 4.4.5** The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.

**§ 4.4.6** When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

**§ 4.4.7** Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 4.4.8** 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 prior to resolution of the Claim by the Architect, by mediation or by arbitration.

#### **§ 4.5 MEDIATION**

**§ 4.5.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

**§ 4.5.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**§ 4.5.3** 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.

#### **§ 4.6 ARBITRATION**

**§ 4.6.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.

**§ 4.6.2** Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

**§ 4.6.3** A demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section 13.7.

**§ 4.6.4 Limitation on Consolidation or Joinder.** No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. 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.

**§ 4.6.5 Claims and Timely Assertion of Claims.** 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.

**§ 4.6.6 Judgment on Final Award.** 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.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 DEFINITIONS**

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

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

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

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

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

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

**§ 5.2.4** The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitute.

### § 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 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 which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

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

§ 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.

## 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 Section 4.3.

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

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

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

### § 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

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

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS

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

- 1 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.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section 7.3.6.

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

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor 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.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect 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, a reasonable allowance for overhead and profit. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 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.

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

§ 7.3.8 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 accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That 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 4.

§ 7.3.9 When the Owner and Contractor agree with the 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 shall be recorded by preparation and execution of an appropriate Change Order.

#### § 7.4 MINOR CHANGES IN THE WORK

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

**ARTICLE 8 TIME****§ 8.1 DEFINITIONS**

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

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

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

**§ 8.2 PROGRESS AND COMPLETION**

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

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

**§ 8.3 DELAYS AND EXTENSIONS OF TIME**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

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

**ARTICLE 9 PAYMENTS AND COMPLETION****§ 9.1 CONTRACT SUM**

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

**§ 9.2 SCHEDULE OF VALUES**

**§ 9.2.1** Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to

payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which 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** Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 defective Work not remedied;

- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another 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 persistent failure to carry out the Work in accordance with the Contract Documents.

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

#### § 9.6 PROGRESS PAYMENTS

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

§ 9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such 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 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 Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

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

#### § 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

## § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

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

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

## § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

## § 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

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

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

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

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

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

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

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

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

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

**§ 10.2.2** The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

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

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 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 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 verify that it has been 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. 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, which adjustments shall be accomplished as provided in Article 7.

§ 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) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.



§ 10.5 If, without negligence on the part of the Contractor, the Contractor is held liable 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.

#### § 10.6 EMERGENCIES

§ 10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 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 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 which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. 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. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. 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 in accordance with the Contractor's information and belief.

#### § 11.2 OWNER'S LIABILITY INSURANCE

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

#### § 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

§ 11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.

§ 11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§ 11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.

#### § 11.4 PROPERTY INSURANCE

§ 11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.4.1.1 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.

§ 11.4.1.2 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 which 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.

§ 11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.4.1.5 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.

§ 11.4.2 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.

§ 11.4.3 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.

§ 11.4.4 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.

§ 11.4.5 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 11.4.7 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.

§ 11.4.6 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 11.4. 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.

§ 11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 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.

§ 11.4.8 A loss insured under 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 11.4.10. 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.

§ 11.4.9 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 in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. 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.

§ 11.4.10 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 as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

#### § 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 UNCOVERING OF WORK**

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required 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 which the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, 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**

§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work which 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 which 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 which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract

Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

§ 12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

§ 13.1.1 The Contract shall be governed by the law of the place where the Project is located.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect 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 an institutional lender providing construction financing for the Project. In such event, the lender shall assume 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

§ 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or 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 to the last business address known to the party giving notice.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, 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 required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.6 INTEREST

§ 13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### § 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ 13.7.1 As between the Owner and Contractor:

- .1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- .3 After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

## 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 which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work

by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### **§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and 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 request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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

#### **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

**§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.



## *State of West Virginia*

### Supplementary Conditions to AIA Document A201-1997 General Conditions of the Contract for Construction

The following Supplementary Conditions modify the General Conditions of the Contract for Construction, AIA Document A201, 1997 Edition. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

#### ARTICLE 1 GENERAL PROVISIONS

##### 1.1 BASIC DEFINITIONS

##### 1.1.1 THE CONTRACT DOCUMENTS

1.1.1 Delete the last sentence of this Subparagraph and substitute the following:

The Contract Documents also include the Bidding Documents (Advertisement or Invitation to Bid, Request for Quotations/Bids, Instructions to Bidders, Bidding Document Depositories, 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 bound herein), and West Virginia Department of Labor Wage Rates.

#### ARTICLE 2 OWNER

##### 2.1 GENERAL

2.1.2 Delete Subparagraph 2.1.2 in its entirety.

Add the following Paragraph to Paragraph 2.1:

2.1.3 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 3 CONTRACTOR

##### 3.4 LABOR AND MATERIALS

3.4.1 Add the following Clauses to Subparagraph 3.4.1:

3.4.1.1 In accordance with West Virginia Code §5-

19-1 et. sequor, every contract for 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.

3.4.1.2 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 is 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.

3.4.1.3 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 bid if they are supplying foreign aluminum, glass or steel.

##### 3.4.1.4 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 contract 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 as 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 W. Va. Code §5A-3-56.

3.4.1.5 The Contractor and all Subcontractors shall pay the higher of the U. S. Department of Labor minimum wage rates or the West Virginia Department of Labor minimum wage rates for the County in which this contract is performed, pursuant to West Virginia Code §21-5-1 et. seq.

3.4.1.6 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 one million dollars (\$1,000,000). 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;

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 W. Va. 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 W. Va. 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 Clause and submit it to the Joint Committee on Government and Finance by October 15, 2005, for a legislative audit to be prepared for the December, 2005, interim session. Beginning with the legislative interim meetings in May 2003, and continuing through the interim period ending in November 2005, the Division of Labor shall provide quarterly reports to the Joint Committee on Government and Finance on the information compiled pursuant to this Act. 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 Act.

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 W. Va. Code §21-1C-6 and transmittal of data to the Joint Committee on Government and Finance.

4 PENALTIES: Pursuant to W. Va. 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.

## ARTICLE 4

### ADMINISTRATION OF THE CONTRACT

#### 4.4 RESOLUTION OF DISPUTES

4.4.1 Delete Subparagraph 4.4.1 in its entirety and substitute the following:

4.4.1 Decision of the Architect. Claims, including

those alleging an error or omission of the Architect but excluding those arising under Paragraphs 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect shall not decide disputes between the Contractor and persons or entities other than the Owner.

4.4.5 Delete the last sentence in Subparagraph 4.4.5 and substitute the following.

Approval or rejection of a claim by the Architect shall be final and binding on the parties unless it is pursued further by either party in accordance with Subparagraph 4.4.6.

4.4.6 Delete Subparagraph 4.4.6 in its entirety and substitute the following:

4.4.6 When a written decision of the Architect approving or rejecting a Claim is rendered, either party may make written demand for adjudication of the Claim as prescribed in Paragraph 4.5. A written demand for adjudication of a Claim covered by the Architect's decision must be made within 30 days after the date on which the party making the demand receives the final written decision. Failure to make written demand of adjudication of such Claim within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor.

4.4.8 Delete Subparagraph 4.4.8 in its entirety.

#### 4.5 MEDIATION

4.5 Delete Paragraph 4.5 in its entirety and substitute the following:

#### 4.5 SETTLEMENT OF CLAIMS

4.5.1 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. Not

withstanding any provision to the contrary in the Contract Documents, all references to mediation and 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 Subparagraphs have been rewritten to bring them into conformance with the foregoing.

4.5.2 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.

4.5.3 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5, shall, after initial decision by the Architect or 30 days after submission of the Architect, 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.

4.5.4 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 Architect.

4.5.5 During court proceedings, the Owner and Contractor shall comply with Subparagraph 4.3.3.

4.5.6 Claims shall be made within the time limits specified in Subparagraph 4.4.6.

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

#### 4.6 ARBITRATION

4.6 Delete Paragraph 4.6 in its entirety.

### ARTICLE 7 CHANGES IN THE WORK

#### 7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.6 Make the following change in Subparagraph 7.3.6:

Beginning in the fourth line of the first sentence, delete the words "a reasonable allowance for overhead and profit" and substitute "an allowance for overhead and profit in accordance with Clauses 7.3.10.1 through 7.3.10.9 below."

7.3.8 Delete Subparagraph 7.3.8 and substitute the following:

7.3.8 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.

7.3.9 Add the following Clause to Subparagraph 7.3.9:

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

Add the following Subparagraph to Paragraph 7.3:

7.3.10 In Subparagraph 7.3.6, the allowance for overhead and profit included in the total cost to the Owner 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 shall be determined in accordance with Subparagraph 7.3.6.

.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. Labor, material and all other costs shall be completely itemized as prescribed above. Where major cost items are Subcontracts, they shall also be itemized as prescribed above. In no case will a change involving over \$1,000 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.

## ARTICLE 8 TIME

### 8.3 DELAYS AND EXTENSION OF TIME

8.3.1 Make the following change in Subparagraph 8.3.1:

In line five, delete the words "mediation and arbitration" and substitute "court action."

## ARTICLE 9 PAYMENTS AND COMPLETION

### 9.3 APPLICATIONS FOR PAYMENT

9.3.1.1 Delete Clause 9.3.1.1 and substitute the following:

9.3.1.1 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.

Add the following Clauses to Subparagraph 9.3.1:

9.3.1.3 Until the Work is fifty percent (50%) complete, the Owner will pay ninety percent (90%) 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.

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

### 9.7 FAILURE OF PAYMENT

9.7.1 Make the following change in Subparagraph 9.7.1:

In line three, change "seven days" to "sixty days." In line four, delete the words "or awarded by arbitration."

## 9.8 SUBSTANTIAL COMPLETION

9.8.5 Add the following Clause to Subparagraph 9.8.5:

9.8.5.1 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.

## 9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.2 Add the following Clause to Subparagraph 9.10.2:

9.10.2.1 Before final payment is due the Contractor, all applicable State and local taxes must be paid. If requested by the Owner, the Contractor shall present evidence that payment or satisfaction of all such tax obligations has been made.

9.10.3 Add the following Clauses to Subparagraph 9.10.3:

9.10.3.1 Unless and to the extent final completion is delayed through no fault of the Contractor as provided in Subparagraph 9.10.3, 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.

9.11 Add the following Paragraph to Article 9:

## 9.11 LIQUIDATED DAMAGES

9.11.1 The Owner will suffer financial loss if the Work is not Substantially Complete within the Contract Time as defined in Article 8, 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 shall pay the Owner the sum(s) stated in the Agreement Between Owner and Contractor and/or purchase order.

9.11.2 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 Subparagraph 4.3.7 by the Contractor and must be made within the time limits stated in Subparagraph 4.3.2.

## ARTICLE 10

### PROTECTION OF PERSONS AND PROPERTY

#### 10.2 SAFETY OF PERSONS AND PROPERTY

10.2.4 Add the following Clause to Subparagraph 10.2.4:

10.2.4.1 When the use or storage of explosives, inflammable or toxic materials or equipment or unusual methods are necessary, the Contractor shall give the Owner and Architect reasonable advance notice in writing. In this case, reasonable notice shall be at least five calendar days.

#### 10.3 HAZARDOUS MATERIALS

10.3.3 Delete Subparagraph 10.3.3 in its entirety.

10.5 Make the following modification to Paragraph 10.5:

In the third line, change "indemnify" to "reimburse."

## ARTICLE 11

### INSURANCE AND BONDS

#### 11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 Make the following changes in Subparagraph 11.1.1:

11.1.1.1 Delete the semicolon at the end of Clause 11.1.1.1 and add:

" , 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."

11.1.1.2 Delete the semicolon at the end of Clause 11.1.1.2 and add:

" , or persons or entities excluded by statute from the requirements of Clause 11.1.1.1 but required by the Contract Documents to provide the insurance required by that Clause."

Add the following Clauses to Subparagraph 11.1.1:

11.1.1.9 Liability Insurance shall include all major divisions of coverage and be on the comprehensive basis including:

1. Premises Operations (including X, C and U coverage as applicable);
2. Independent Contractors' Protective;
3. Products and Completed Operations;
4. Personal Injury Liability and Employment Exclusion deleted;
5. Contractual, including specified provisions for Contractor's obligations under Paragraph 3.18;
6. Owned, non-owned and hired motor vehicles; and
7. Broad Form Property Damage including Completed Operations.

11.1.2 Add the following Clause to Subparagraph 11.1.2:

11.1.2.1 The insurance required by Subparagraph 11.1.1 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 General Conditions.

#### 11.4 PROPERTY INSURANCE

11.4.1 Modify the first sentence of Subparagraph 11.4.1 as follows:

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

Add the following sentences at the end of this Subparagraph:

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.

11.4.1.2 Delete Clause 11.4.1.2 in its entirety.

11.4.1.3 Delete Clause 11.4.1.3 in its entirety.

11.4.2 Modify Subparagraph 11.4.2 by substituting "Contractor" for "Owner" in the first line.

11.4.4 Delete Subparagraph 11.4.4 in its entirety.

11.4.6 Make the following changes in Subparagraph 11.4.6:

Make the following modification at the beginning of the first sentence: "Before an exposure to a loss can occur, the Contractor shall file with the Owner..."

At the end of the third sentence, change "Contractor" to "Owner."

11.4.7 Modify Subparagraph 11.4.7 by substituting "Contractor" for "Owner" at the end of the first sentence.

11.4.8 Modify Subparagraph 11.4.8 by substituting "Contractor" for "Owner" as fiduciary; except that at the first reference to "Owner" in the first sentence, the word "this" should be substituted for "Owner's."

11.4.9 Modify Subparagraph 11.4.9 by substituting "Contractor" for "Owner" each time the latter word appears, except in the last sentence. In the fifth line, change "arbitration award" to "court award or judgement."

11.4.10 Delete Subparagraph 11.4.10 in its entirety and substitute the following:

11.4.10 The Contractor as fiduciary shall have the 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 Contractor's exercise of this power, if such objection is made, the dispute shall be resolved as provided in Paragraph 4.5. The Contractor as fiduciary shall, in that case, make settlement with insurers in accordance with directions of the Court. If distribution of the insurance proceeds as directed by the Court is required, the Court will direct such distribution.

#### 11.5 PERFORMANCE BOND AND PAYMENT BOND

11.5.1 Add the following Clauses to Subparagraph 11.5.1:

11.5.1.1 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. Bonds should be issued by a solvent surety company listed in the Federal Register, U.S. Department of the Treasury, Circular 570, and Surety Companies Acceptable on Federal Bonds Notice. The surety company must also be one with which the Owner has no reasonable objection and it must be authorized to do business in the State of West Virginia.

11.5.1.2 Bonds must be countersigned by a licensed West Virginia resident agent. 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.

11.5.1.3 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 Paragraphs 11.6 and 11.7 to Article 11:

#### 11.6 WAGE BOND

11.6.1 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.

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

#### 11.7 CONTRACTOR'S LICENSE

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

11.7.2 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 prior to issuance of a purchase order/contract.

### ARTICLE 13 MISCELLANEOUS PROVISIONS

#### 13.6 INTEREST

13.6.1 Delete Subparagraph 13.6.1 in its entirety and substitute the following:

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

#### 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 Delete Subparagraph 13.7.1 in its entirety and substitute the following:

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

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### 14.1 TERMINATION BY THE CONTRACTOR

14.1.1 Make the following changes in Subparagraph 14.1.1:

At the end of Clause 14.1.1.3 delete "; or" and insert a period. Delete Clause 14.1.1.4 in its entirety.

14.1.3 Delete Subparagraph 14.1.3 in its entirety and substitute the following:

14.1.3 If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exist, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract. 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.

14.4.1 Delete Subparagraph 14.4.1 in its entirety and substitute the following:

14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause upon thirty days written notice.

14.4.3 Delete Subparagraph 14.4.3 in its entirety and substitute the following:

14.4.3 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 Subparagraph 14.1.3 above.

14.4.4 Add the following Subparagraph 14.4.4 to Article 14:

14.4.4 Service performed under this Contract is to



continue in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for these services, this Contract becomes of no effect and is null and void after June 30.

**ADDITIONAL SUPPLEMENTARY CONDITIONS**

Add the following Article 15, Equal Opportunity, to the General Conditions of the Contract for Construction:

**ARTICLE 15  
EQUAL OPPORTUNITY**

**15.1 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**

15.1.1 The Contractor agrees that it will comply with Title VI of the Federal Civil Rights Act of 1964 (P.L. 88-352) and the regulations of the State of West Virginia, to 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.

15.1.2 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 provision 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.

15.1.3 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 A201-1997**

APPROVED AS TO FORM THIS 1st

DAY OF November, 2004

DARRELL V. MCGRAW, JR.  
ATTORNEY GENERAL

BY: *Dawn E. Wayfield*  
DEPUTY ATTORNEY GENERAL

**AIA DOCUMENT A701-1997** *Instructions to Bidders***TABLE OF ARTICLES**

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7. PERFORMANCE BOND AND PAYMENT BOND
8. FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

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



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**ARTICLE 1 DEFINITIONS**

- 1.1 Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, the bid form, and other sample bidding and contract forms. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.
- 1.2 Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201, or in other Contract Documents are applicable to the Bidding Documents.
- 1.3 Addenda are written or graphic instruments issued by the Architect prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.
- 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.
- 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.
- 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.
- 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.
- 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.
- 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work.

**ARTICLE 2 BIDDER'S REPRESENTATIONS**

- 2.1 The Bidder by making a Bid represents that:
- 2.1.1 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.
- 2.1.2 The Bid is made in compliance with the Bidding Documents.
- 2.1.3 The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.
- 2.1.4 The Bid is based upon the materials, equipment and systems required by the Bidding Documents without exception.



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## ARTICLE 3 BIDDING DOCUMENTS

### 3.1 COPIES

3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to Bid in the number and for the deposit sum, if any, stated therein. The deposit will be refunded to Bidders who submit a bona fide Bid and return the Bidding Documents in good condition within ten days after receipt of Bids. The cost of replacement of missing or damaged documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the Bidding Documents and the Bidder's deposit will be refunded.

3.1.2 Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the Advertisement or Invitation to Bid, or in supplementary instructions to bidders.

3.1.3 Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

3.1.4 The Owner and Architect may make copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

### 3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

3.2.1 The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Architect errors, inconsistencies or ambiguities discovered.

3.2.2 Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Architect at least seven days prior to the date for receipt of Bids.

3.2.3 Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

### 3.3 SUBSTITUTIONS

3.3.1 The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

3.3.2 No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Architect at least ten days prior to the date for receipt of Bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the Work, including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

3.3.3 If the Architect approves a proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.



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3.3.4 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

#### 3.4 ADDENDA

3.4.1 Addenda will be transmitted to all who are known by the issuing office to have received a complete set of Bidding Documents.

3.4.2 Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

3.4.3 Addenda will be issued no later than four days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

3.4.4 Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

### ARTICLE 4 BIDDING PROCEDURES

#### 4.1 PREPARATION OF BIDS

4.1.1 Bids shall be submitted on the forms included with the Bidding Documents.

4.1.2 All blanks on the bid form shall be legibly executed in a non-erasable medium.

4.1.3 Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

4.1.4 Interlineations, alterations and erasures must be initialed by the signer of the Bid.

4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change."

4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on the bid form nor qualify the Bid in any other manner.

4.1.7 Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. The Bidder shall provide evidence of legal authority to perform within the jurisdiction of the Work. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

#### 4.2 BID SECURITY

4.2.1 Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Instructions to Bidders. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. The amount of the bid security shall not be forfeited to the Owner in the event the Owner fails to comply with Paragraph 6.2.



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4.2.2 If a surety bond is required, it shall be written on AIA Document A310, Bid Bond, unless otherwise provided in the Bidding Documents, and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney.

4.2.3 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

#### 4.3 SUBMISSION OF BIDS

4.3.1 All copies of the Bid, the bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

4.3.2 Bids shall be deposited at the designated location prior to the time and date for receipt of Bids. Bids received after the time and date for receipt of Bids will be returned unopened.

4.3.3 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

4.3.4 Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered.

#### 4.4 MODIFICATION OR WITHDRAWAL OF BID

4.4.1 A Bid may not be modified, withdrawn or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

4.4.2 Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received, and date- and time-stamped by the receiving party on or before the date and time set for receipt of Bids. A change shall be so worded as not to reveal the amount of the original Bid.

4.4.3 Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

4.4.4 Bid security, if required, shall be in an amount sufficient for the Bid as resubmitted.

### ARTICLE 5 CONSIDERATION OF BIDS

#### 5.1 OPENING OF BIDS

At the discretion of the Owner, if stipulated in the Advertisement or Invitation to Bid, the properly identified Bids received on time will be publicly opened and will be read aloud. An abstract of the Bids may be made available to Bidders.

#### 5.2 REJECTION OF BIDS

The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.



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**5.3 ACCEPTANCE OF BID (AWARD)**

5.3.1 It is the intent of the Owner to award a Contract to the lowest qualified Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informality and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

5.3.2 The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

**ARTICLE 6 POST-BID INFORMATION****6.1 CONTRACTOR'S QUALIFICATION STATEMENT**

Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request, a properly executed AIA Document A305, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted as a prerequisite to the issuance of Bidding Documents.

**6.2 OWNER'S FINANCIAL CAPABILITY**

The Owner shall, at the request of the Bidder to whom award of a Contract is under consideration and no later than seven days prior to the expiration of the time for withdrawal of Bids, furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Unless such reasonable evidence is furnished, the Bidder will not be required to execute the Agreement between the Owner and Contractor.

**6.3 SUBMITTALS**

6.3.1 The Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, after notification of selection for the award of a Contract, furnish to the Owner through the Architect in writing:

- 1 a designation of the Work to be performed with the Bidder's own forces;
- 2 names of the manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the Work; and
- 3 names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

6.3.2 The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

6.3.3 Prior to the execution of the Contract, the Architect will notify the Bidder in writing if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

6.3.4 Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.



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**ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND****7 BOND REQUIREMENTS**

7.1 If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Bonds may be secured through the Bidder's usual sources.

7.2 If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

7.3 If the Owner requires that bonds be secured from other than the Bidder's usual sources, changes in cost will be adjusted as provided in the Contract Documents.

**7.2 TIME OF DELIVERY AND FORM OF BONDS**

7.2.1 The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to be commenced prior thereto in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Subparagraph 7.2.1.

7.2.2 Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond. Both bonds shall be written in the amount of the Contract Sum.

7.2.3 The bonds shall be dated on or after the date of the Contract.

7.2.4 The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

**ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

Unless otherwise required in the Bidding Documents, the Agreement for the Work will be written on AIA Document A401, Standard Form of Agreement Between Owner and Contractor Where the Basis of Payment is a Stipulated Sum.



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## State of West Virginia

### Supplementary Instructions to Bidders for AIA Document A701-1997

The following supplements modify, change, delete from or add to the Instructions to Bidders, AIA Document A 701, 1997 Edition. Where any Article, Paragraph, Subparagraph, or Clause of the Instructions to Bidders is modified or deleted by these Supplementary Instructions to Bidders, the unaltered portions of that Article, Paragraph, Subparagraph or Clause shall remain in effect.

#### ARTICLE 3 BIDDING DOCUMENTS

##### 3.4 ADDENDA

##### 3.4.4 Add the following sentence to Subparagraph 3.4.4:

If the Bidder fails to acknowledge receipt of each Addendum, then the Bid may be rejected.

#### ARTICLE 4 BIDDING PROCEDURES

##### 4.2 BID SECURITY

##### 4.2.1 Delete the last sentence of Subparagraph 4.2.1.

##### 4.2.2 Delete Subparagraph 4.2.2 in its entirety and substitute the following:

4.2.2 Each Bid shall be accompanied by a certified check payable to the Owner for five percent (5%) of the total Bid, or in lieu of a certified check, a Bid Bond may be provided on the State of West Virginia form included in the Project Manual for five percent (5%) of the total Bid. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of power of attorney. Bonds issued by nonresident companies or agencies must be countersigned by a resident agent of the State of West Virginia.

##### 4.3 SUBMISSION OF BIDS

##### 4.3.1 Add the following Clause to Subparagraph 4.3.1:

4.3.1.1 Bids shall be submitted on the Form of Proposal included in the Bidding Documents. Each Bidder should obtain a Request for Bids/Quotations from the party receiving Bids and must follow all instructions contained therein. The Request for Bids/Quotations should be stapled to the front of the Form of Proposal. Each Bid shall be enclosed in a sealed, self addressed, opaque envelope plainly marked with the following information:

#### SEALED BID

Proposal for: (Project Name)

Buyer File Number:

Request for Bids/Quotations Number:

Time of Bid Opening:

Date of Bid Opening:

The information required above may be obtained from the Request for Bids/Quotations.

#### 4.4 MODIFICATION OR WITHDRAWAL OF BID

##### 4.4.1 Add the following Clause to Subparagraph 4.4.1:

4.4.1.1 Bids may not be modified or withdrawn for a period of sixty (60) days after receipt of Bids without forfeiture of Bid security, not as a penalty but as liquidated damages.

#### ARTICLE 6 POST-BID INFORMATION

##### 6.2 OWNER'S FINANCIAL CAPABILITY

##### 6.2 Delete Paragraph 6.2 in its entirety.

#### ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

##### 7.1 BOND REQUIREMENTS

##### 7.1.1 Add the following Clause to Subparagraph 7.1.1:

7.1.1.1 The successful Bidder shall furnish a Performance Bond and a Labor and Material Payment Bond for 100% of the contract award and, if applicable, a two year roofing Maintenance Bond for the full value of the roofing system. Bonds issued by nonresident companies or agencies must be countersigned by a resident agent of the State of West Virginia.

**7.2 TIME OF DELIVERY AND FORM OF BONDS**

7.2.1 Delete Subparagraph 7.2.1 in its entirety and substitute the following:

7.2.1 The successful Bidder shall deliver the required bonds and all other Contract Documents, including Certificates of Insurance, within 15 days after receipt of the Owner's letter of intent to award a Contract. All Contract Documents must be properly executed. Should the successful Bidder fail or refuse to deliver the required bonds and all other Contract Documents, properly executed, within 15 days after receipt of the Owner's notice of intent to award a Contract, the successful Bidder shall forfeit the security deposited with his Bid as liquidated damages, not as a penalty.

7.2.2 Delete Subparagraph 7.2.2 in its entirety and substitute the following:

7.2.2 The bonds shall be written on the State of West Virginia forms bound in the Project Manual and according to the instructions provided with these forms.

Add the following Article 9 to the Instructions to Bidders:

**ARTICLE 9**  
**OTHER CONDITIONS**

**9.1 PREVAILING WAGE RATES**

9.1.1 The successful Bidder and all Subcontractors shall pay the higher of the U. S. Department of Labor minimum wage rates or the West Virginia Department of Labor wage rates as established for County in which the Project is located pursuant to West Virginia Code §21-5-1 et. seq. (See applicable West Virginia Department of Labor Wage Rates following Supplementary General Conditions and/or Special Conditions).

**9.2 WAGE BOND**

9.2.1 Firms engaged in construction work in West Virginia less than five years preceding the date of the Bid shall post a wage bond with the West Virginia Department of Labor.

**9.3 CONTRACTOR'S LICENSE**

9.3.1 West Virginia Code §21-11-2 requires that all persons desiring to perform contractual work in West Virginia must be duly licensed. The West Virginia

Contractor's Licensing Board is empowered to issue the contractor's license. Application for a contractor's license may be made by contacting the West Virginia Department of Labor.

9.3.2 West Virginia Code §21-11-11 requires Bidders to include the Bidder's contractor's license number on its Bid.

9.3.3 The successful Bidder shall furnish a copy of its contractor's license prior to issuance of a Purchase Order/Contract.

**9.4 VENDOR REGISTRATION**

9.4 The successful Bidder must be a registered vendor with the West Virginia Department of Administration, Purchasing Division, prior to issuance of a purchase order. If the Bidder is not a registered vendor, application should be made to the Purchasing Division. The Bidder should obtain a vendor number prior to the Bid Opening.

**9.5 NOTICE TO PROCEED**

9.5.1 Any work performed or any materials contracted for prior to receipt of the Owner's written Notice to Proceed and/or Purchase Order shall be at the Bidder's risk.

**9.5 CONTRACT TIME**

9.5.1 The successful Bidder, as a condition of the Contract, agrees that all Work is to be Substantially Complete within the Contract Time stated in the Invitation to Bid and/or Request for Bids/Quotations.

9.5.2 The Owner will suffer financial loss if the Work is not Substantially Complete within the Contract Time. For each calendar day of delay in achieving Substantial Completion, the Contractor shall be liable for and shall pay the Owner the amount of liquidated damages stated in the Invitation to Bid and/or Request for Bids/Quotations, not as a penalty, but as liquidated damages. 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 the Contract Time must be properly documented in accordance with the Contract Documents by the Contractor.

END OF SUPPLEMENTARY INSTRUCTIONS TO  
BIDDERS

APPROVED AS TO FORM THIS 942  
DAY OF April, 1999

DARRELL V. McGRAW, JR.  
ATTORNEY GENERAL



WAIS Document Retrieval

Includes application of all insulating materials, protective coverings and finishings to all types of mechanical systems.

BOIL0045-003 10/01/2006

GRANT COUNTY

	Rates	Fringes
BOILERMAKER.....	\$ 27.71	16.47

BOIL0154-003 06/01/2006

BROOKE AND HANCOCK COUNTIES

	Rates	Fringes
BOILERMAKER.....	\$ 31.40	18.82

BOIL0667-001 10/01/2003

BARBOUR, BRAXTON, CABELL, CALHOUN, DODDRIDGE, GILMER, HAMPSHIRE, HARDY, HARRISON, JACKSON, KANAWHA, LEWIS, MARION, MARSHALL, MASON, MINERAL, MORGAN, MONONGALIA, OHIO, PENDLETON, PLEASANTS, PRESTON, PUTNAM, RANDOLPH, RITCHIE, ROANE, TAYLOR, TUCKER, TYLER, UPSHUR, WAYNE, WEBSTER, WETZEL, WIRT AND WOOD COUNTIES.

	Rates	Fringes
BOILERMAKER.....	\$ 29.55	13.79

BRMD0006-003 06/01/2005

MINERAL COUNTY

	Rates	Fringes
Bricklayer (Brick, Stone, Marble, Mosaic, Pointers, Caulkers, Artificial, Tilesetters and Terrazzo workers).....	\$ 22.25	8.07

BRWV0001-001 07/01/2006

MARSHALL, OHIO, TYLER AND WETZEL COS.

	Rates	Fringes
Bricklayer.....	\$ 24.00	10.59
Tile Setter.....	\$ 24.00	10.59

BRWV0006-003 06/01/2006

CALHOUN, JACKSON, PLEASANTS, RITCHIE, ROANE, WIRT AND WOOD COS.

	Rates	Fringes
Bricklayer.....	\$ 24.31	9.78
Tile Setter.....	\$ 23.81	9.78

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BRWV0009-002 12/01/2006

BRAXTON, KANAWHA AND PUTNAM COS.

	Rates	Fringes
Bricklayer, Stonemason.....	\$ 24.79	13.40
Marble, Tile Layer & Terrazzo Worker.....	\$ 24.79	13.40

BRWV0011-001 07/01/2006

BROOKE AND HANCOCK COS.

	Rates	Fringes
Bricklayer		
Industrial.....	\$ 27.06	10.10
All other work.....	\$ 25.29	10.10
Tile Setter.....	\$ 23.39	10.10

BRWV0015-002 12/01/2005

DODDRIDGE, GILMER, HARRISON, LEWIS, MARION AND UPSHUR COUNTIES

	Rates	Fringes
Bricklayer		
Commercial.....	\$ 25.71	8.69
Industrial.....	\$ 27.23	8.69

BRWV0015-005 06/01/2005

BARBOUR, DODDRIDGE, GILMER, HARDY, HARRISON, LEWIS, MARION,  
MONONGALIA, PRESTON, TAYLOR, TUCKER AND UPSHUR COUNTIES

	Rates	Fringes
Cement Masons:		
Commercial.....	\$ 24.91	8.17
Industrial.....	\$ 26.43	8.17

BRWV0015-006 12/01/2006

CALHOUN, JACKSON, PLEASANTS, RITCHIE, ROANE, WIRT, AND WOOD  
Counties

	Rates	Fringes
Marble & Tile Finisher.....	\$ 20.00	7.07

CARP0003-003 12/07/2004

BROOKE, HANCOCK, MARSHALL (North of 39 degrees 46' latitude)  
and OHIO COUNTIES

	Rates	Fringes
Carpenters: (carpet, drywall, lather, and soft tile installers).....	\$ 21.31	11.81

CARP0302-001 12/07/2004

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BUILDING

LABELL and WAYNE COUNTIES

	Rates	Fringes
Carpenter & Soft Floor Layer.....	\$ 23.85	10.40
Piledriverman.....	\$ 24.40	10.40

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CARP0476-001 12/07/2004

BRAXTON, DODDRIDGE, GILMER, HARRISON, LEWIS, MARION, UPSHUR,  
and WEBSTER COUNTIES

	Rates	Fringes
Carpenter (carpet, drywall and soft tile installers).....	\$ 23.83	10.30
Piledriver.....	\$ 24.38	10.30

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CARP0604-003 12/01/2005

BARBOUR, MONOGALIA, PRESTON, RANDOLPH, TAYLOR, and TUCKER  
COUNTIES

	Rates	Fringes
Carpenter.....	\$ 23.98	10.84

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CARP0899-001 06/01/2003

CALHOUN, PLEASANTS, RITCHIE, TYLER, WETZEL, WIRT, and WOOD  
COUNTIES

	Rates	Fringes
Carpenters: (Soft Tile & Carpet Installers, Drywall installers).....	\$ 24.03	7.99
Piledriverman.....	\$ 24.28	8.80

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CARP1024-003 05/01/2005

GRANT, HAMPSHIRE, HARDY, AND PENDLETON COUNTIES

	Rates	Fringes
Carpenter (dry wall hangers and soft layers).....	\$ 23.25	7.95

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CARP1024-006 05/01/2005

MINERAL AND MORGAN COUNTIES

	Rates	Fringes
Carpenter.....	\$ 23.25	7.95

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CARP1159-001 12/01/2006

JACKSON and MASON COUNTIES

	Rates	Fringes
Carpenter.....	\$ 23.88	13.30

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 CARP1207-006 12/01/2005

KANAWHA, PUTNAM, and ROANE COUNTIES

	Rates	Fringes
Carpenter.....	\$ 23.98	10.84
File Driver.....	\$ 24.53	10.84

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 CARP1519-001 12/01/2006

CABELL AND WAYNE COUNTIES

	Rates	Fringes
Millwright.....	\$ 22.92	11.83

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 CARP1755-001 12/01/2006

BRAXTON, CALHOUN, DODDRIDGE, GILMER, HARRISON, JACKSON,  
 KANAWHA, LEWIS, MARION, MASON, PLEASANTS, PUTNAM, RITCHIE,  
 ROANE, TYLER, UPSHUR, WETZEL, WIRT AND WOOD COUNTIES

	Rates	Fringes
Millwright.....	\$ 27.26	14.20

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 CARP1871-019 05/01/2001

BROOKE, HANCOCK, MARSHALL AND OHIO COUNTIES

	Rates	Fringes
Millwright.....	\$ 22.21	8.54

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 CARP2264-001 01/01/2002

BROOKE, HANCOCK, MARSHALL, OHIO, AND WETZEL COUNTIES

	Rates	Fringes
Piledriverman.....	\$ 23.82	8.48

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 ELEC0026-010 11/07/2005

HARDY COUNTY

	Rates	Fringes
Electrician.....	\$ 21.71	7.80

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 ELEC0141-001 09/01/2005

BROOKE (Buffalo Twp. only) MARSHALL, OHIO AND WETZEL COUNTIES

	Rates	Fringes
Cable splicer.....	\$ 25.37	15.33
Electrician.....	\$ 25.12	15.33





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 ELECO317-009 09/04/2005

BRAXTON, CABELL, CALHOUN, GILMER, KANAWHA, MASON, PUTNAM,  
 ROANE, AND WAYNE COUNTIES

	Rates	Fringes
Line Construction:		
Cable Splicer.....	\$ 27.70	15.5%+5.50
Equipment Operator.....	\$ 22.62	15.5%+5.50
Groundman.....	\$ 13.39	15.5%+5.50
Lineman.....	\$ 26.34	15.5%+5.50

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 ELECO466-001 06/01/2006

BRAXTON, CALHOUN, GILMER, KANAWHA, PUTNAM, ROANE AND WEBSTER  
 COUNTIES

	Rates	Fringes
Cable splicer.....	\$ 32.32	12.60
Electrician.....	\$ 29.38	12.60

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 ELECO596-001 06/01/2006

BARBOUR, DODDRIDGE, HARRISON, LEWIS, MARION, MONONGALIA,  
 PENDLETON, PRESTON, RANDOLPH, TAYLOR, TUCKER, AND UPSHUR COS.

	Rates	Fringes
Cable splicer.....	\$ 29.50	15.75
Electrician.....	\$ 26.72	15.75

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 ELECO596-002 06/01/2006

DODDRIDGE, LEWIS, MARION, AND UPSHUR COUNTIES

	Rates	Fringes
Line Construction:		
Cable Splicers.....	\$ 26.46	15.67
Groundman & Truck Drivers...	\$ 19.24	15.67
Lineman & Equipment Op.....	\$ 24.05	15.67

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 ELECO968-002 06/01/2006

JACKSON, PLEASANTS, RITCHIE, TYLER, WIRT AND WOOD COUNTIES

	Rates	Fringes
Line Construction:		
Groundman.....	\$ 21.37	3%+16.16
Lineman, Equipment Operator, and Cable Splicer.	\$ 26.71	3%+16.16

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 ELECO968-003 06/01/2006

JACKSON, PLEASANTS, RITCHIE, TYLER, WIRT AND WOOD COUNTIES.

	Rates	Fringes
Electrician.....	\$ 26.71	16.96

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ELEV0006-002 01/01/2006

ROOKE, HANCOCK, MARION, MARSHALL, OHIO AND WETZEL COUNTIES:

	Rates	Fringes
levator Constructor.....	\$ 34.81	13.265+a

aid Holidays:

New Year's Day; Memorial Day; Independence Day; Labor Day; Verterans Dayl; Thanksgiving day; the Friday after Thanksgiving Day; and Christmas Day.

ootnotes:

a. Employee contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

ELEV0048-001 01/01/2005

RAXTON, CABELL, CALHOUN, DODDRIDGE, GILMER, HARRISON, JACKSON, ANAWHA, LEWIS, MASON, MINERAL, PLEASANTS, PUTNAM, RITCHIE, OANE, TYLER, PSHUR, WAYNE, WIRT AND WOOD COUNTIES

	Rates	Fringes
levator Constructor.....	\$ 30.03	9.605+a

PAID HOLIDAYS: a. New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day. Employer contributes 8% of the basic hourly rate for 5 years or more of service or 6% of the basic hourly rate for 6 months to 5 years of service as vacation pay credit.

ENGI0132-001 06/01/2006

OWER EQUIPMENT OPERATORS:

	Rates	Fringes
ower equipment operators:		
GROUP 1.....	\$ 26.61	15.13
GROUP 2.....	\$ 26.26	15.13
GROUP 3.....	\$ 25.26	15.13
GROUP 4.....	\$ 20.66	15.13

GROUP 1: All cranes, derricks and tower cranes with 180 ft. of boom including mast and jibs or lifting capacity of 100 tons and hoists 30,000 pound line pull or more, cableways.

GROUP 2: Those operating cranes, derricks, tower cranes and similar equipment with a lifting capacity of 15 tons and over, boom trucks, all shovels, draglines, clamshells, caisson drilling rigs. Mechanic with tools with 3/4 inch drive and below.

GROUP 3: All tow boats or work boats, backhoes, end loaders, gradalls, all other mechanics, side boom cat and all cranes and concrete mixing plants, core drills, two drum hoist, concrete pump, mechanically operated laser screed, self



IRON0769-005 06/01/2006

ABELL AND WAYNE COUNTIES

	Rates	Fringes
Ironworkers:		
ZONE 1:		
0-10 miles from Union Hall.	\$ 26.17	15.07
ZONE 2:		
10-50 miles from Union Hall.....	\$ 26.57	15.07
ZONE 3:		
50 miles & over from Union Hall.....	\$ 28.17	15.01

IRON0787-004 12/07/2006

CALHOUN, DODDRIDGE, GILMER, JACKSON, LEWIS, MASON, PLEASANTS, RITCHIE, ROANE, UPSHUR, WIRT AND WOOD COUNTIES

	Rates	Fringes
Ironworkers:.....	\$ 25.60	14.75

LABO0379-003 12/01/2006

HAMPSHIRE, MARION, MINERAL, MONONGALIA, MORGAN, PRESTON AND TAYLOR COUNTIES

	Rates	Fringes
Laborers:		
GROUP 1.....	\$ 18.93	7.90
GROUP 2.....	\$ 19.29	7.90
GROUP 3.....	\$ 19.72	7.90
GROUP 4.....	\$ 19.72	7.90

LABORER CLASSIFICATIONS

GROUP 1: Laborer, Carpenter Tender, Water boy, Fire watch, Demolition worker, Landscape laborer, Flagman.

GROUP 2: Powderman tender, Semi-skilled laborer, Scaffold builders, Signal man, Brick mason tenders, Plasterer tenders, Cement finishers tenders, Stone mason tenders, Lathers tenders, Tile setters tenders, Mortar mixers, Jackhammer operators, Vibrator operators, Tamper operators, Chipping and peening hammer operators, Air siphon and air pump operators, Riprap finishers, Concrete saw operators, Concrete technicians, Power saw operators, Chain saw operators, Motorized buggy operators, Pipe layers tenders, Drill operators tenders sheeters and shorers, Post hole digger operators, Asphalt rakers, Lance and/or water blaster operators, Blacksmith tenders, Workmen working with asbestos, Batch house scale operators, Workmen working with acid mortar and acid brick, Workmen working in acid with cresote and mastic asphalt, Nozzlemen for gunnite or sandblasting, Tool room attendants, Ride or walk roller tampers, Toxic & hazardous waste removal laborer, Asbestos abatement laborer, Lead-based paint remover, Grade checker, Pavement buster operators.

GROUP 3: Powderman, Air track operator, Pipe layer  
(including laser beam set-up), Burner.

GROUP 4: Blacksmith

LABO0543-001 06/01/2006

CABELL, MASON AND WAYNE COUNTIES

	Rates	Fringes
Laborers:		
GROUP 1:.....	\$ 22.22	9.15
GROUP 2:.....	\$ 22.67	9.15
GROUP 3:.....	\$ 22.96	9.15

LABORER CLASSIFICATIONS

GROUP 1: Laborer, Carpenter tender, Flagmen, Water boy,  
Fire watch, Demolition worker, Landscape laborer.

GROUP 2: Powderman tender, Semi-skilled laborer, Scaffold  
builders, Signal man, Brick mason tenders, Plasterer  
tenders, Cement finishers tenders, Stone mason tenders,  
Lathers tenders, Tile setters tenders, Mortar mixers,  
Jackhammer operators, Vibrator operators, Tamper Operators,  
Chipping and peening hammer operators, Air siphon and air  
pump operators, Riprap finishers, Concrete saw operators,  
Concrete technicians, Power saw operators, Chain saw  
operators, Motorized buggy operators, Pipe layers tenders,  
Drill operators tenders Sheeters and shorers, Post hole  
digger operators, Asphalt rakers, Lance and/or water  
blaster operators, Blacksmith tenders, Workmen working with  
asbestos, Batch house scale operators, Workmen working with  
acid mortar and acid brick, Workmen working in acid with  
cresote and mastic asphalt, Nozzlemen for gunnite or  
sandblasting, Tool room attendants, Ride or walk roller  
tamperers, Toxic & Hazardous waste removal laborer, Asbestos  
abatement laborer, Lead-based paint remover, Grade checker.

GROUP 3: Blacksmith, Powderman, Air track operator, Pipe  
layer (including laser beam set-up), Burner.

LABO0809-002 07/01/2004

BROOKE AND HANCOCK COUNTIES

	Rates	Fringes
Laborers:		
GROUP 1.....	\$ 21.00	5.45
GROUP 2.....	\$ 21.00	5.45
GROUP 3.....	\$ 21.00	5.45
GROUP 4.....	\$ 22.00	5.45
GROUP 5.....	\$ 22.00	5.45
GROUP 6.....	\$ 22.00	5.45
GROUP 8.....	\$ 22.00	5.45
GROUP 9.....	\$ 22.00	5.45
GROUP 10.....	\$ 22.00	5.45
GROUP 11.....	\$ 22.00	5.45

GROUP 1 - Carpenter Tender; Flagperson; General laborer;

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Landscaper; Toolroom person; Janitor; Warehousemen;  
Drinking Water Supplier and Hazardous Waste Level D.

GROUP 2 - Brick Handler; Tender for Brick Mason, Plasterer,  
Stonemason & Tile Setter; Mortarman for Mason & Plasterer;  
Man Mixing Cement for Cement Finisher; Scaffold Builder;  
Mortar Mixer Machine Operator; Forklifts; Hazardous Waste  
Level C; Lead Abatement; Fork Trucks; Walk-Behind Concrete  
Saw; Form Setters; Epoxy Laborers; Paving Brick Laborers;  
Dry Block; Pre-Cast; Lagging; Decorate Blocks and Sand  
Stone.

GROUP 3 - Concrete Buster; Jack Hammer; Air Spaces; Chipping  
Hammer; Air Tamper; Vibrator; Power Buggy; Concrete Saw;  
Power Saw; Sandblaster; Acetylene Burner; Scuba Diver;  
Panel Cleaning Machine Operator; Power Driven Tools; Air  
Pump; Air Blow Pipe; Pipelayer & Tender Working in Ditch or  
Tunnel; Hand Spikers on Railroads and Laborer Handling  
Concrete for test or working with Tar; Acid or Creosote;  
Asbestos 2" and under; Gasoline Pump; Shop Vac (wet or  
dry); Skid Steers; Hazardous Waste Level B; Fire Hose; High  
Pressure Water Hose; Super Suckers; Vacuum Truck and Hose  
Laborers, Core Drillers; Drilling for Anchor Bolts, Dowel  
Rods and Pins;

GROUP 4 - Laser Beam: \$.35 per Hour above the Laborers  
classification with which he is or she is working.

GROUP 5 - Work Pertaining to or in connection with & Repair  
of Stoves, Blast Furnaces, Basic Oxygen Process Furnaces;  
Steeple & Stacks; Annealing Process Furnaces; Kilns,  
Soaking Pits, Coke Batteries on Industrial Work; (Employer  
agrees to pay One Dollar (\$1.00) per hour above prevailing  
Group 5 rate Laborers working with crafts receiving hot  
pay, including working conditions granted to other crafts);  
Hazardous Waste Level A; Ram cutters on Industrial work and  
anything pertaining to, such as expansion joints etc.

GROUP 6 - Demolition of Stacks:

- A - 50' to 100'
- B - 100' to 150'
- C - Over 150'

Rates apply when servicing or working with other crafts  
receiving high time or working in areas subject to free  
fall.

GROUP 7 - Blasterman & Tender; Bellman & Lancer, All Bottom  
Men in Blast Furnaces, Stacks, Stoves & Dust Catchers; Mud  
Man & Laborers working with carbon brick and handling  
Bottom Block on Blast Furnaces, Stacks, Stoves & Dust  
Catchers

GROUP 8 - Ditches, Trenches, Caissons & Coffers Over 6' deep  
Open Top

GROUP 9 - Miners including Caissons & Coffers, Horizontal or  
Underground, Mucking Machine Operator

GROUP 10 - Tunnel laborers, Muckers including caissons and  
Coffers, Horizontal and Underground.

GROUP 11 - Gunnite Nozzleman & Gunnite Machine Operator -

## Grout Nozzleman &amp; Grout Machine Operator

## Level A:

Protective equipment is required when the area has been determined to contain extremely toxic contaminants or contaminants unknown but may be expected to be extremely toxic and/or immediately dangerous to life and health (IDLH). This ensemble includes a fully encapsulated chemical suit (moon suit), Self-contained Breathing Apparatus (SCBA), or Airline Fed Respirator and various types and numbers of boots and gloves; Cool vest and voice-activated radios are optional equipment sometimes worn, Level A ensembles provide the highest level of protection from contaminants, but places the greatest physicals and mental stress on the worker. The claustrophobic environment of the moon suit causes anxiety in most people, which greatly increases the already inherent heat stress problems. Also this ensemble reduces vision, mobility, dexterity and communication capacity, all of which increases the risk of normal job-related injuries; i.e., slips, falls, caught between, etc.

## Level B:

Protective equipment includes a chemically resistant splash suit and a SCBA or Airline Respirator. This ensemble is required when the situation is very hazardous, such as oxygen deficient atmospheres, IDLH atmospheres, or confined space entries, but the risk of skin exposure is not as great as in Level A situation.

The Level B ensemble gives the second highest level of protection, but also puts physical stress on the worker; primarily heat stress, reduced vision, dexterity and mobility directly attributable to wearing of the protective equipment. Therefore, in addition to the hazardous material, the hazard of normal job-related injuries is greatly increased.

## Level C:

Protective equipment includes a protective suit and an Air Purifying Respirator (APR) with the appropriate filter canisters. The ensemble is used when the contaminants are reliably known not to be hazardous to the skin and not IDLH (Immediately Dangerous to Life and Health) and correct filter protection is available.

This ensemble offers adequate protection for many jobs. Heat stress may be a problem due to the suit and respiration is more difficult due to the inherent restrictions to breathing in an APR. Also, normal job-related injury risk will be nearly as high as for Level B equipment.

## Level D:

Type clothing to be worn only in established "safe zones" may consist of normal work clothes to normal skin protection such as gloves, face shields, goggles, coveralls and occasionally respiratory protection.

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LABO0984-001 12/01/2006

BARBOUR, BRAXTON, DODRIDGE, GILMER, GRANT, HARDY, HARRISON,  
LEWIS, PENDLETON, RANDOLPH, TUCKER, UPSHUR, AND WEBSTER COUNTIES



	Rates	Fringes
Laborer		
GROUP 1.....	\$ 18.93	7.75
GROUP 2.....	\$ 19.29	7.75
GROUP 3.....	\$ 19.72	7.75
GROUP 4.....	\$ 19.72	7.75

LABORER CLASSIFICATIONS

GROUP 1: Laborer, Carpenter Tender, Water boy, Fire watch, Demolition worker, Landscape laborer, Flagman.

GROUP 2: Powderman tender, Semi-skilled laborer, Scaffold builders, Signal man, Brick mason tenders, Plasterer tenders, Cement finishers tenders, Stone mason tenders, Lathers tenders, Tile setters tenders, Mortar mixers, Jackhammer operators, Vibrator operators, Tamper operators, Chipping and peening hammer operators, Air siphon and air pump operators, Riprap finishers, Concrete saw operators, Concrete technicians, Power saw operators, Chain saw operators, Motorized buggy operators, Pipe layers tenders, Drill operators tenders sheeters and shorers, Post hole digger operators, Asphalt rakers, Lance and/or water blaster operators, Blacksmith tenders, Workmen working with asbestos, Batch house scale operators, Workmen working with acid mortar and acid brick, Workmen working in acid with cresote and mastic asphalt, Nozzlemen for gunnite or sandblasting, Tool room attendants, Ride or walk roller tampers, Toxic & hazardous waste removal laborer, Asbestos abatement laborer, Lead-based paint remover, Grade checker, Pavement buster operators.

GROUP 3: Powderman, Air track operator, Pipe layer (including laser beam set-up), Burner.

GROUP 4: Blacksmith

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LAB01085-001 06/01/2006

CALHOUN, JACKSON, PLEASANTS RITCHIE, TYLER, WIRT AND WOOD COUNTIES

	Rates	Fringes
Laborers:		
GROUP 1.....	\$ 19.99	9.15
GROUP 2.....	\$ 20.29	9.15
GROUP 3.....	\$ 20.64	9.15

LABORER CLASSIFICATIONS

GROUP 1: Laborer, Carpenter Tender, Flagmen, Water Boy, Fire watch, Demolition worker, Landscape laborer.

GROUP 2: Powderman tender, Semi-skilled laborer, Scoffold builders, Signal man, Brick mason tenders, Plasterer tenders, Cement finishers tenders, Stone mason tenders, Lathers tenders, Tile setters tenders, Mortar mixers, Jackhammer operators, Vibrator operators, Tamper operators, Chipping and peening, Hammer operators, Air siphon and air pump operators, Riprap finishers, Concrete saw operators, Concrete technicians, Power saw operators, Chain saw

operators, Motorized Buggy operators, Pipe layers tenders, Drill operators tenders sheeters and shorers, Post hole digger operators, Asphalt rakers, Lance and/or water blaster operators, Blacksmith tenders, Workmen working with asbestos, Batch house scale operators, Workmen working with acid mortar and acid brick, Workmen working in acid with cresote and mastic asphalt, Nozzlemen for gunnite or sandblasting, Tool room attendants, Ride or walk roller tampers, Toxic & hazardous waste removal laborer, Asbestos abatement laborer, Lead-based paint remover.

GROUP 3: Blacksmith, Powderman, Air track operator, Pipe layer (including laser beam set-up), Burner.

\* LAB01149-001 12/01/2006

MARSHALL, OHIO AND WETZEL COUNTIES

	Rates	Fringes
Laborers:		
GROUP 1:.....	\$ 19.17	9.40
GROUP 2:.....	\$ 19.17	9.40
GROUP 3:.....	\$ 19.57	9.40

LABORER CLASSIFICATION

GROUP 1: Laborers, Carpenter tender, Flagmen, Water boy, Demolition worker, Deep ditch, Tool room attendants, Fire watch and Landscape laborer.

GROUP 2: Powderman tender, Semi-skilled laborer, Scaffold builders grade checker, Signal man, Brick masons tenders, Plasterers tenders, Cement masons tenders, Stone masons tenders, Lathers tenders, Tile setters tenders, Mortar mixers, Jackhammer operators, Vibrater operators, Pavement buster operators, Chipping and peening hammer operators, Air siphon and air pump operators, Riprap finishers, Concrete saw operators, Concrete technicians, Power saw operators, Chain saw operators, Motorized buggy operators, Pipe layers tenders, Drill operators tenders, Sheeters and shorers, Post hole diggers operators, Asphalt rakers, Lance and/or water blaster operators, Blacksmith tenders, Batch house scale operators, Workmen working with acid mortar, Mastic asphalt and acid brick, Workmen working in acid and with cresote, Nozzlemen for gunnite or sandblasting, Demolition worker, Ride or walk roller tampers, Deep ditch vertical 6 ft. or more, Scaffolding work over 50 ft. (inside or out), Asbestos abatement laborer, Deep ditch, Toxic & hazardous waste removal laborer, Lead-based paint removal laborer.

GROUP 3: Blacksmith, Powderman, Air track operator, Pipe layer (including laser beam set-up), Burner.

\* LAB01353-001 12/01/2006

KANAWHA, PUTNAM AND ROANE COUNTIES

	Rates	Fringes
Laborers:		
GROUP 1.....	\$ 20.31	9.40

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86	GROUP 2.....\$ 20.93	9.40
	GROUP 3.....\$ 21.77	9.40

GROUP 1: Laborer; Carpenter Tender; Water Boy; Demolition Worker; Fire Watch; Landscape Laborer; Flagmen.

GROUP 2: Powderman Tender; Semi-Skilled Laborer; Scaffold Builder; Grade Checker; Signal Man; Brick Masons Tenders; Plasterer Tenders; Cement Finisher Tender; Stone Masons Tenders; Lathers Tenders; Tile Setters Tenders; Mortar Mixers; Jackhammer; Vibrator; Tamper; Pavement Buster; Chipping & Peening Hammer; Air Siphon & Air Pump; Riprap Finisher; Concrete Saw; Concrete Technician; Power Saw; Chain Saw; Motorized Buggy; Pipelayers Tender; Drill Op. Tender; Sheeters & Shorers; Post Hole Digger; Asphalt Raker; Lance and/or Water Blaster; Blacksmith Tender; Batch House Scale; Workmen working with Acid Mortar; Acid Brick; Acid or Mastic Asphalt; Workmen working with Creosote; Nozzlemen for Gunnite or Sandblasting; Tool Room Attendants; Ride or Walk Roller Tampers; Lather Tender; Tile Setters Tenders; Asbestos Removal Worker; Hazardous Waste Worker.

GROUP 3: Blacksmith; Powdermen; Air Track; Pipe Layer (including Laser Beam Set-Up); Burner.

MARB0005-001 06/01/2005

CABELL, MASON (THAT PORTION SOUTH OF THE KANAWHA RIVER), AND WAYNE COUNTIES

	Rates	Fringes
Marble, terrazzo and tile finisher.....	\$ 20.38	12.75

PAIN0091-001 12/01/2006

BROOKE (SOUTH OF BUFFALO CREEK), MARSHALL, OHIO AND WETZEL COS.

	Rates	Fringes
Painters: Brush, Roller, Paper hanger, Sand/Spray, Waterblast and Perfataping (Including Automatic Perfataping Tools).....	\$ 21.30	9.95

PAIN0091-010 12/01/2005

Brooke, Marshall, Ohio, and Wetzel Counties

	Rates	Fringes
Glazier.....	\$ 22.50	9.30

PAIN0091-011 12/01/2005

Hancock County

Rates	Fringes
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WAIS Document Retrieval

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All new commercial projects; Commercial repaint or renovation projects where the total construction cost on the project (all trades combined) exceeds \$500,000 in construction cost; all work on waste and water treatment facilities.....\$ 21.43 9.95  
 Work at manufacturing plants and power plants.....\$ 23.53 9.95

PAIN1144-001 12/01/2006

PLEASANTS, RITCHIE, TYLER, WIRT AND WOOD COUNTIES

	Rates	Fringes
Glazier.....	\$ 25.98	5.23

PAIN1144-002 12/01/2006

JACKSON, PLEASANTS, RITCHIE, ROANE, TYLER, WIRT AND WOOD COS.

	Rates	Fringes
Painters:		
Bridges, Locks and Dams.....	\$ 26.42	9.95
Bridges, Locks, and Dams.....	\$ 25.97	9.90
Commercial: Brush, roller, Drywall Finisher (Operating mechanical taping machines (men working behind the machine will receive the same rate), Pointers & tapers, Paper & vinyl hangers, Sign painter.....	\$ 21.47	9.95
Industrial: Brush/roller, open structural steel, stacks, vent pipes, flag poles, electrical, radio and tv towers, tanks, spray, sand & water blast, pot man, hydrojet, and glove work.....	\$ 23.57	9.95

PAIN1195-001 12/05/2005

BARBOUR, BRAXTON, CABELL, CALHOUN, DODDRIDGE, GILMER, GRANT, HAMPSHIRE, HARDY, HARRISON, JACKSON, KANAWHA, LEWIS, MARION, MASON, MINERAL, MONOGALIA, MORGAN, PENDELTON, PRESTON, PUTNAM, RANDOLPH, ROANE, TAYLOR, TUCKER WAYNE, WEBSTER AND UPSHUR COUNTIES.

	Rates	Fringes
Glazier.....	\$ 25.28	5.10

PAIN1195-002 12/01/2006

	Rates	Fringes
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Glazier.....\$ 25.99 5.15

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 PLAS0039-003 07/01/2005

BROOKE, CALHOUN, GRANT, HAMPSHIRE, HANCOCK, HARDY, JACKSON,  
 MARSHALL, MINERAL, MORGAN, OHIO, PENDLETON, PLEASANTS, RANDOLPH,  
 RITCHIE, TAYLOR, WETZEL, WIRT & WOOD COUNTIES

	Rates	Fringes
Cement Mason.....	\$ 21.98	8.85
Mechanical Equipment (Floating, Grinding, Bushhammering or finishing).....	\$ 22.58	8.85

-----  
 PLAS0039-004 07/01/2005

BROOKE, CALHOUN, GILMER, GRANT, HAMPSHIRE, HANCOCK, HARDY,  
 JACKSON, MARSHALL, MINERAL, MORGAN, OHIO, PENDLETON, PLEASANTS,  
 RANDOLPH, RITCHIE, TYLER, WETZEL, WIRT & WOOD COUNTIES

	Rates	Fringes
Plasterer.....	\$ 21.82	8.93

-----  
 PLAS0887-001 06/01/2004

	Rates	Fringes
Cement Masons: BRAXTON, KANAWHA, PUTNAM AND ROANE COUNTIES.....	\$ 23.99	11.79
CABELL, MASON AND WAYNE COUNTIES:.....	\$ 25.67	11.79

-----  
 PLAS0887-003 06/01/2004

	Rates	Fringes
Plasterer BRAXTON, KANAWHA, PUTNAM AND ROANE COUNTIES.....	\$ 26.18	10.64
CABELL, MASON AND WAYNE COUNTIES.....	\$ 26.09	10.64

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 PLUM0083-002 07/01/2006

BROOKE COUNTY (North to Route #27 due east to the State Line,  
 Excluding the City limits of Wellsburg), MARSHALL, OHIO AND  
 WETZEL COUNTIES

	Rates	Fringes
Plumber and Steamfitter Work at chemical plants, steel mills, pilot plants, chemical laboratories, compressor stations and bulk storage plants.....	\$ 23.49	20.75
All other work.....	\$ 21.14	20.75

-----  
 PLUM0152-001 11/01/2006

HARRISON, LEWIS, MARION, MONONGALIA, TAYLOR AND UPSHUR COUNTIES

	Rates	Fringes
Plumbers and Pipefitters		
Work at power plants, chemical plants, glass plants and manufacturing facilities.....	\$ 29.26	19.10
All other work.....	\$ 25.73	18.72

-----  
 PLUM0152-002 11/01/2006

HARBOUR, DODDRIDGE AND PRESTON COUNTIES

	Rates	Fringes
Plumbers and Pipefitters		
Work at power plants, chemical plants, glass plants and manufacturing facilities.....	\$ 29.51	19.11
All other work.....	\$ 25.98	18.72

-----  
 PLUM0152-003 11/01/2006

BRAXTON, GILMER, RANDOLPH AND TUCKER COUNTIES

	Rates	Fringes
Plumbers and Pipefitters		
Work at power plants, chemical plants, glass plants and manufacturing facilities.....	\$ 29.76	19.15

-----  
 PLUM0152-004 11/01/2006

BRANT, HAMPSHIRE, HARDY, MINERAL AND PENDLETON COUNTIES

	Rates	Fringes
Plumbers and Pipefitters		
Work at power plants, chemical plants, glass plants and manufacturing facilities.....	\$ 30.01	19.18
All other work.....	\$ 26.48	18.80

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 PLUM0490-001 06/01/1998

BROOKE (North of Buffalo Creek), AND HANCOCK COUNTIES

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 26.15	12.25

-----  
 PLUM0521-002 06/01/2006

CABELL, MASON AND WAYNE COUNTIES

Rates                      Fringes

Plumbers and Pipefitters.....\$ 25.73 11.83

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PLUM0565-001 07/01/2006

CALHOUN, JACKSON, PLEASANTS, RITCHIE, TYLER, WIRT AND WOOD COS.

Rates Fringes

Plumbers and Pipefitters.....\$ 27.74 14.67

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PLUM0625-001 06/01/2006

KANAWHA, PUTNAM, ROANE AND WEBSTER COUNTIES

Rates Fringes

Plumber, Pipefitter,  
Steamfitter

Work at plants that are in  
the process of  
manufacturing a product....\$ 26.74 13.48  
All other work.....\$ 26.09 13.48

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ROOF0034-002 05/01/2000

GRANT, HAMPSHIRE, HARDY, MINERAL, AND MORGAN COUNTIES

Rates Fringes

Roofers:

Composition Mopmen.....\$ 16.25 5.05  
Composition Roofer.....\$ 16.00 5.05  
Pitch Tear Off or Put On....\$ 16.50 5.05  
Slaters.....\$ 16.15 5.05

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ROOF0185-004 06/01/2005

CABELL, KANAWHA, MASON, PUTNAM AND WAYNE COS.

Rates Fringes

Roofers:.....\$ 23.70 8.76

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ROOF0188-002 07/01/2006

BROOKE, HANCOCK, MARSHALL AND OHIO COUNTIES

Rates Fringes

Roofers:

Caol Tar Pitch &  
Waterproofing.....\$ 23.52 9.00  
Roofers.....\$ 23.27 9.00

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ROOF0242-002 06/01/2005

BARBOUR, BRAXTON, CALHOUN, DODDRIDGE, GILMER, HARRISON,  
JACKSON, LEWIS, MARION, MONONGALIA, PENDLETON, PLEASANTS,  
PRESTON, RANDOLPH, RITCHIE, ROANE, TAYLOR, TUCKER, TYLER,  
UPSHUR, WETZEL, WIRT AND WOOD COUNTIES

Rates Fringes





Truck drivers:

GROUP 1.....	\$ 20.86	a+b
GROUP 2.....	\$ 20.92	a+b
GROUP 3.....	\$ 21.02	a+b
GROUP 4.....	\$ 21.25	a+b
GROUP 5.....	\$ 20.53	a+b
GROUP 6.....	\$ 20.64	a+b
GROUP 7.....	\$ 20.80	a+b

TRUCK DRIVER CLASSIFICATION

GROUP 1: Yardmen, Pick-ups, Station wagons, Panel trucks, Flatbed Material Truck (Straight Job, Greasers, Washers, Tiremen, and Dump Truck (up to 5 cubic yards).

GROUP 2: Tank truck (straight)

GROUP 3: Dump truck (5 cu. yds. & over), Semi-dump trucks, Semi-trailer (whether flat, rack or pole and hauled or pushed by truck or tractor), Agitators or mixed trucks (up to 5 cu. yds.), and Tank trucks (semi).

GROUP 4: Low-boy trailers, Winch trucks, Fork trucks, Distributor trucks (front & back end), Truck crane, and Monrail Truck.

GROUP 5: Agitator or Mixer Truck (5 cubic yards and over)

GROUP 6: Euclids, Dumpsters, Turnarockers, Ross carriers, Athey wagons or similar equipment, A-frame, Hydrolift, Dual purpose trucks.

GROUP 7: Mechanics

FOOTNOTES:

- a. EMPLOYER CONTRIBUTES \$652.00 PER MONTH PER EMPLOYEE EMPLOYED 30 DAYS OR MORE.
- b. EMPLOYER CONTRIBUTES \$420.12 PER MONTH PER EMPLOYEE EMPLOYED 30 DAYS OR MORE.

TEAM0428-001 07/01/1989

BROOKE AND HANCOCK COUNTIES

	Rates	Fringes
Truck drivers:		
GROUP 1:.....	\$ 16.20	a
GROUP 2:.....	\$ 16.21	a
GROUP 3:.....	\$ 16.25	a
GROUP 4:.....	\$ 16.28	a
GROUP 5:.....	\$ 16.83	a
GROUP 6:.....	\$ 16.93	a
GROUP 7:.....	\$ 17.05	a
ALL OTHER WORK:		
GROUP 1:.....	\$ 14.58	a
GROUP 2:.....	\$ 14.59	a
GROUP 3:.....	\$ 14.63	a
GROUP 4:.....	\$ 14.65	a
GROUP 5:.....	\$ 15.15	a
GROUP 6:.....	\$ 15.24	a
GROUP 7:.....	\$ 15.35	a

WAIS Document Retrieval

TRUCK DRIVER CLASSIFICATION

GROUP 1: Yardmen

GROUP 2: Euclids, Dumpsters, Turnarockers, Ross carrier, Athey wagons

GROUP 3: Flatboy material trucks, Dump trucks, Semi-dump trucks

GROUP 4: Tank trucks (straight & semi)

GROUP 5: Lowboy trailers, Winch trucks, A-frames, Fork trucks, Truck crane, Distributor Trucks (front back end)

GROUP 6: Mechanic

GROUP 7: Semi trailers and tractor trailers

FOOTNOTE:

a. EMPLOYER CONTRIBUTES \$65.00 PER WEEK PER EMPLOYEE

TEAM0505-003 06/01/2003

CABELL, MASON AND WAYNE COUNTIES

	Rates	Fringes
Truck drivers:		
GROUP 1:.....	\$ 23.95	10.35
GROUP 2:.....	\$ 23.95	10.35
GROUP 3:.....	\$ 25.43	10.35
GROUP 4:.....	\$ 24.53	10.35
GROUP 5:.....	\$ 24.91	10.35
GROUP 6:.....	\$ 25.26	10.35

TRUCK DRIVER CLASSIFICATION

GROUP 1: Warehousemen, yardmen, pick-ups, station wagons, panel trucks, flatbody material trucks (straight job), greasers, washers, tiremen, gas pump attendants, dump trucks (up to 5 cu. yds.), truck tenders.

GROUP 2: Tank truck (straight), dump trucks (5 cu. yds & over), agitator or mixer trucks (up to 5 cu. yds.), and flat bed tandems.

GROUP 3: Winch trucks, fork trucks, distributor trucks (front and back end), truck crane, mono-rail truck.

GROUP 4: Material checker & receiver, mechanics tender.

GROUP 5: Agitator or mixer truck (5 cu. yds. & over).

GROUP 6: Mechanic, tri-axle dump trucks, hydraulic lift tail gate truck and farm type tractors, end dumpsters, turnarockers, ross carriers, athey wagon, semi-dump, semi-trailer, semi-tank and lowboy trailers

GROUP 7: Mechanics master (3 or more) employed

TEAM0697-002 09/01/2000

MARSHALL, OHIO AND WETZEL COUNTIES

	Rates	Fringes
Truck drivers:		
GROUP 1.....	\$ 18.75	a+b
GROUP 2.....	\$ 18.80	a+b
GROUP 3.....	\$ 18.85	a+b
GROUP 4.....	\$ 19.38	a+b
GROUP 5.....	\$ 18.83	a+b
GROUP 6.....	\$ 19.03	a+b
GROUP 7.....	\$ 19.11	a+b
GROUP 8.....	\$ 18.95	a+b
GROUP 9.....	\$ 19.08	a+b
GROUP 10.....	\$ 18.76	a+b
GROUP 11.....	\$ 18.76	a+b
GROUP 12.....	\$ 19.48	a+b
GROUP 13.....	\$ 19.45	a+b

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Pick-Up trucks, Warehousemen, Yardmen and Part Chaser

GROUP 2: Flat bed material trucks, Dump trucks, Semi-dump trucks

GROUP 3: Semi-tractor trailers

GROUP 4: Lowboy trailers, Winch, Fork & Distributor trucks (front & back end) & Truck Cranes

GROUP 5: Tank truck (straight & semi)

GROUP 6: Agitator & mixer truck (up to 5 cu. yds.)

GROUP 7: Agitator & mixer truck (over 5 cu. yds.)

GROUP 8: Pole trailer

GROUP 9: Euclids, Dumpsters, Turna rockers, Ross Carriers & Athry Wagons

Group 10: Material Checkers & Receivers

Group 11: Greasers, Washers, Tiremen, Gas Pump Attendants, Mechanic Tender

GROUP 12: Mechanics

GROUP 13: A-Frame

FOOTNOTES:

a. EMPLOYER CONTRIBUTES \$166.00 PER WEEK PER EMPLOYEE.

b. EMPLOYER CONTRIBUTES \$85.00 PER WEEK PER EMPLOYEE.

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

unlisted classifications needed for work not included within the scope of the classifications listed may be added afterward only as provided in the labor standards contract clauses 29CFR 5.5 (a) (1) (ii)).

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In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- an existing published wage determination
- a survey underlying a wage determination
- a Wage and Hour Division letter setting forth a position on a wage determination matter
- a conformance (additional classification and rate) ruling

In survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

WEST VIRGINIA DIVISION OF LABOR  
Building Construction Wage Rates

FILED

2007 JAN -2 PM 4:05

Harrison County  
2007

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

CLASSIFICATION	BASIC HOURLY RATE	FRINGE BENEFITS
BOILERMAKER	31.44	15.56
BRICKLAYER	27.11	9.18
BRICKLAYER - POINTER/CAULKER/CLEANER	27.11	9.18
CARPENTER	22.00	12.78
CARPET LAYER	22.00	12.78
CEMENT MASON	21.89	10.68
DRYWALL HANGER	22.00	12.78
ELECTRICIAN	24.05	16.14
ELEVATOR HELPER	24.38	15.07
ELEVATOR MECHANIC	34.83	15.07
GLAZIER	25.99	5.32
IRON WORKER ERECTOR *	24.07	15.10
IRON WORKER FENCE ERECTOR *	24.07	15.10
IRON WORKER JOURNEYMAN *	24.07	15.10
IRON WORKER REINFORCING *	24.07	15.10
IRON WORKER SHEETER *	24.07	15.10
IRON WORKER STRUCTURAL *	24.07	15.10
LABORER CLASS I *	19.72	7.90
LABORER CLASS II *	19.29	7.90
LABORER CLASS III *	18.93	7.90
LABORER FLAGMAN	16.58	7.90
LATHER	22.00	12.78
MARBLE FINISHER	19.00	8.58
MARBLE SETTER	27.11	9.18
MILLWRIGHT	27.34	12.99
OPERATING ENGINEER I *	26.61	15.43
OPERATING ENGINEER II *	26.26	15.43
OPERATING ENGINEER III *	25.26	15.43
OPERATING ENGINEER IV *	20.66	15.43
PAINTER	21.34	10.21
PILEDRIVER	22.50	12.78
PLASTERER	21.24	10.68
PLUMBER/FITTER	25.73	18.80
ROOFER/HEATED COAL TAR PRODUCT	22.99	8.68
ROOFER/WATER DAMP PROOFER	22.49	8.68
SHEET METAL WORKER	24.91	15.10

WEST VIRGINIA DIVISION OF LABOR  
BUILDING CONSTRUCTION WAGE RATES  
2007

**APPENDIX IV**  
**IRONWORKERS**

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Where precast, prestressed, reinforced concrete, structural, floor, side, top or bottom members (columns, beams, girders, slabs, panels, plus all post tensioning work) are used in the construction of building bridges and other structures and power equipment, such as derricks, cranes, jacks and/or rigging is used, the work of unloading, loading, handling and placing to complete erection and dismantling of same shall be performed by Ironworkers.

All reinforcing, structural steel or other material used as or taking the place of, and all falsework, S.I.P. or other decking, expansion dams and embedded metals, catwalks, handrails, stairs, platforms, guardrails, piling pertaining to falsework, scuppers, downspouts, piping and supports of the same, signs and supports, drilling of holes in the piers and abutments, when drilled through templates, or base plates to anchor same, shear connectors, welding on all the same, all repairs, fence, retrofits or replacement of materials or structures shall be performed by Ironworkers.

WEST VIRGINIA DIVISION OF LABOR  
BUILDING CONSTRUCTION WAGE RATES  
2007

APPENDIX III

Page 4 of 4

TEAMSTER CLASSIFICATIONS

CALHOUN, GILMER, JACKSON, PLEASANT, RITCHIE, ROANE, TYLER, WIRT AND WOOD

- CLASS A:** Warehouseman, Yardman, Truck Helpers, Pick-up, Stationwagon, Panel Truck  
**CLASS B:** Flat-body Material Truck (straight jobs), Dump Truck (up to 5 cu. yd.), Greasers, Washers, Tiremen, Gas Pump Attendant, Mechanic Helper, Material Checker & Receiver, Tank Trucks (straight)  
**CLASS C:** Dump Truck (5 cu. yd. & over), Semi Dump Truck, Semi Trailer (whether flat, rack or pole and hauled or pushed by truck or tractor), Agitators or Mixed Trucks (up to 5 cu. yd.), Tank Trucks (semi) Monorails  
**CLASS D:** Low Boy Trailers, Winch Trucks, Fork Truck, Distributor Trucks (front & back end) Truck Crane, Agitators or Mixer Truck (5 cu. yd & over), Hydraulic Tail Gate, Farm Type Tractors  
**CLASS E:** UCLA's, Dumpsters, Turna-rockers, Ross Carriers, Athey Wagons or similar equipment, A - Frame, Hydrollift, Dual Purpose Trucks  
**CLASS F:** Mechanic  
**CLASS G:** Master Mechanic (3 or more mechanics employed)

**NOTE:** Dispatcher paid \$.40 an hour above highest rate on the job.  
Double Hitched equipment paid 50% more than the above classifications if operated by one driver.



WEST VIRGINIA DIVISION OF LABOR  
BUILDING CONSTRUCTION WAGE RATES  
2007

APPENDIX III

Page 3 of 4

TEAMSTER CLASSIFICATIONS

BERKELEY, HAMPSHIRE, HARDY, JEFFERSON, MINERAL, MORGAN AND PENDLETON

- CLASS A:** Dumpmen, Flagmen.
- CLASS B:** Pickups, Dump Trucks (under 5 yd.), Straight Trucks, (Parts Runner, Escort & Pilot Vehicle receive rate for size of truck driven)
- CLASS C:** Yardman, Helpers, Warehousemen, Checkers, Receivers, Panel Trucks, Straight Truck (multiple axle), Dumpster (under 5 yd.), Transit Mix, Dump Truck (5-9 yd.), Flat Body Material Trucks, Greasers, Tiremen, Mechanic Helpers, Rubber Tire Tractors (towing or pushing flatbody vehicles), Form Trucks, Dispatcher, Bus (12 pass. +)
- CLASS D:** Dump Truck (10-15 yd.).
- CLASS E:** Dump Truck (over 15 yd.), Bottom & End Dump Euclid, All Other Euclid Type Trucks, Turna-rockers, Ross Carriers, Athey Wagons, A-Frames, Mechanics, Utility Drivers, Semi-Tractor or Tractor Trailer, Low Boy Truck, Asphalt Distributor Truck, Agitator Mixer, Dumpcrites, Batch Trucks, Specialized Earth Moving Equip., Off Highway Tandem Back Dump, Twin Engine and Double Hitched Equipment (not self-loaded).
- CLASS F:** All Equipment in Class E 49 to 59 ton.
- CLASS G:** All Equipment in Class E over 59 ton.

**NOTE:** Double hitched equipment paid 50% more than the above classifications if operated by one driver.

BARBOUR, DODDRIDGE, HARRISON, LEWIS, MARION, MONONGALIA, PRESTON, RANDOLPH, TAYLOR, TUCKER AND UPSHUR

- CLASS A:** "A" Frame Operator, Mechanics (Truck, Foreman and/or Dispatchers).
- CLASS B:** Dump Truck, Agitator or Mixer Trucks and other hauling equip. (20 yd. and over).
- CLASS C:** Dump Truck, Agitator or Mixer Trucks and other hauling equip. (12 yd. to 20 yd.), Utility Drivers, Semi-Tractor or Tractor Trailer, Low Boy Truck, Asphalt Distributor, Mucker Trucker, Rubber Tired Tractors (towing or pushing).
- CLASS D:** Semi-Dump Trucks, Semi-Trailers (flat, rack or pole), Lowboy Trucks, Distributor Trucks, Agitators or Mixer Trucks (up to and including 5yd.), Dump Trucks and Dumpsters (5yd. to 12 yd.)
- CLASS E:** Flatbody Material Trucks (straight jobs), Dump Trucks (up to 5yd.), Material Checkers, Material Receivers, Team 4-up, Greasers, Tiremen and Mechanic Helpers (truck).
- CLASS F:** Warehouse, Yardmen, Truck Helpers, Pickups, Station Wagons, Panel Trucks, Team 2-up.

WEST VIRGINIA DIVISION OF LABOR  
BUILDING CONSTRUCTION WAGE RATES

2007

APPENDIX III

Page 2 of 4

TEAMSTER CLASSIFICATIONS

BOONE, BRAXTON, CLAY, FAYETTE, GREENBRIER, KANAWHA, MCDOWELL, MERCER, MONROE,  
NICHOLAS, POCAHONTAS, PUTNAM, RALEIGH, SUMMERS, WEBSTER AND WYOMING

- CLASS A:** Warehouseman, Yardman, Truck Helpers, Pick-ups, Stationwagons, Panel Trucks, Flatbed Material Trucks (straight job), Greasers, Washers, Tiremen, Gas Pump Attendant, Dump Truck (up to 5 cu. yd.).
- CLASS B:** Tank Truck (straight)
- CLASS C:** Dump Truck (5 cu. yd. and over), Semi-Dump Truck, Semi-Trailer (flat, rack or pole and hauled or pushed by truck or tractor), Agitator or Mixer Truck (up to 5 cu. yd.), Farm Type Tractor, Tank Truck (semi)
- CLASS D:** Low Boy Trailer, Winch Truck, Fork Truck, Distributor Truck (front and back end), Truck Crane, Monorail Truck and Mechanic's Helper
- CLASS E:** Material Checker and Receiver
- CLASS F:** Agitator or Mixer Truck (5 cu. yd. and over)
- CLASS G:** Mechanic, Euclid Dumpster, Turna-rockers, Ross Carrier, Athey Wagon or Similar Equip., A-Frame Hydrolift, Dual Purpose Truck
- CLASS H:** Master Mechanic (3 or more mechanics employed)

NOTE: Double hitched equipment paid 50% more than the above classifications if operated by one driver.

BROOKE AND HANCOCK

- CLASS A:** Warehouseman, Yardman, and Truck Helper
- CLASS B:** Flatboy Material Truck, Dump Truck and Semi-Dump Truck
- CLASS C:** Semi-Trailer and Tractor Trailer
- CLASS D:** Low-Boy Trailer, Winch Truck, A-Frame, Fork Truck, Distributor Truck (front and back end) and Truck Crane
- CLASS E:** Tank Truck (straight and semi)
- CLASS F:** End Dump, Dumpsters, Turna-rockers, Ross Carrier, Athey Wagons, Greasers, Washers, Tireman, Gas Pump Attendant, Mechanic Helper and Articulated Dumps
- CLASS G:** Mechanic

NOTE: Double hitched equipment paid 50% more than the above classifications if operated by one driver

**WEST VIRGINIA DIVISION OF LABOR  
BUILDING CONSTRUCTION WAGE RATES  
2007**

**APPENDIX III**

Page 1 of 4

**TEAMSTER CLASSIFICATIONS**

**CABELL, LINCOLN, LOGAN, MASON, MINGO AND WAYNE**

- CLASS A:** Warehouseman, Yardman, Truck Helpers, Pick-ups, Stationwagons, Panel Trucks, Flat-body Material Truck (straight job), Greasers, Washers, Tireman, Gas Pump Attendant, Dump Trucks (up to 5 cu. yd.)
- CLASS B:** Tank Truck (straight), Dump Truck (5 cu. yd. and over), Agitator/Mixer Truck (up to 5 cu. yd.), and Flatbed Tandems
- CLASS C:** Winch Trucks, Fork Trucks, Distributor Trucks Semi (front end and back end), Truck Crane, Monorail Truck
- CLASS D:** Mechanic's Helper, Material Checker and Receiver
- CLASS E:** Agitator or Mixer Truck (5 cu. yds. and over)
- CLASS F:** Mechanic, Tri-Axle Dump Trucks, Hydraulic Lift Tailgate, Truck and Farm Type Tractor, End Dumpster, Turna-rockers, Ross Carriers, Athey Wagons, Semi-Dump, Semi-Trailer, Semi-Tank and Lowboy Trailer
- CLASS G:** Master Mechanic (3 or more mechanics employed)

**NOTE:** Double hitched equipment paid 50% more than the above classifications if operated by one driver.

**MARSHALL, OHIO AND WETZEL**

- CLASS A:** Warehouseman, Yardman and Truck Helpers, Parts Chaser, Pick-Up Trucks
- CLASS B:** Flatbed Material Trucks, Dump and Semi-Dump
- CLASS C:** Semi-Tractor Trailers
- CLASS D:** Lowboy Trailers, Winch, Fork and Distributor Trucks (front & back end) & Truck Cranes.
- CLASS E:** Tank Truck (straight and semi)
- CLASS F:** Agitator and Mixer Truck (up to 5 cu. yards)
- CLASS G:** Agitator and Mixer Truck (over 5 cu. yards)
- CLASS H:** Pole Trailer
- CLASS I:** Euclid Dumpsters, Turna-rockers, Ross Carriers, Athey Wagon
- CLASS J:** Material Checkers and Receivers, Greasers, Washers, Tiremen, Gas Pump Attendants, Mechanic Helper
- CLASS K:** Mechanics
- CLASS L:** A- Frame

WEST VIRGINIA DIVISION OF LABOR  
BUILDING CONSTRUCTION WAGE RATES  
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APPENDIX II

OPERATING ENGINEER CLASSIFICATIONS

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**CLASS I** – All friction cranes, derricks and tower cranes and all cranes with 180 feet or more of boom including mast and jibs or lifting capacity of 100 tons or more and hoists 30,000 pound line pull or more, cableways.

**CLASS II** – Cranes, derricks, tower cranes, boom trucks, shovels, draglines, clamshells, caisson drilling rigs and similar equipment with a lifting capacity of 15 tons and over. Mechanic with tools with  $\frac{3}{4}$  inch drive and below.

**CLASS III** – All tow boats or work boats, backhoes, endloaders, all excavators, gradalls, all other mechanics, side boom cat, all other cranes and concrete mixing plants, core drills, two drum hoist, concrete pump, mechanically operated laser screed, self contained hydraulic air drills, directional drill operator, standard gauge locomotive, rubber tired scraper, power grader dozer, tractor and pan, push cat, asphalt and concrete paving equipment operator, compactor, compactor with blade, material hauler, articulating equipment, material hoist, wellpoint system, forklift, trencher, air tugger, "A" frame truck, grease truck operator, all tractors.

**CLASS IV** – Fireman, deckhand, elevators, ross carrier, air compressor, high compression equipment, load handler, "Bobcat" or skid steer loaders, greaser helper, two bag and under concrete mixer, assistant engineer on standard gauge locomotives, locomotive cranes, truck and crawler cranes, brakeman on cranes used for moving rail cars (when equipment is moving cars only), rollers, Barber Green loader, mechanic helper, welding machines, light plants, generators, conveyors, mechanical heaters, and pump operators, masonry hoist and all farm type tractors.

WEST VIRGINIA DIVISION OF LABOR  
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APPENDIX I

**FRINGE BENEFITS**

Sums indicated in the fringe benefit column may be used for "bona fide" health & welfare benefit coverage, pension coverage, apprenticeship funds, and vacation pay. Any sum taken from the fringe package must be placed in a "bona fide" program or fund; verifiable with documentation, and cannot be greater than the industry standard for the classification. Federal mandate requires that pension benefits be no more than 25% of the taxable wage. In the case of a defined contribution plan, the "annual additions" to a participant's account (or all such accounts aggregated, if the employer has more than one defined contribution plan) must not exceed the lesser of: (a) 25% of the participant's compensation, or (b) the greater of (1) \$30,000 or (2) 1/4 of the dollar limitation for the defined benefit plans. [IRC Sec. 415(c)]. However these sums may be adjusted, within state and federal guidelines to meet increases or decreases in a particular fringe benefit with prior approval of the person receiving said benefit. Any amount of the fringe benefit package not used for a "bona fide" fringe benefit as outlined above must be added to the base rate and treated as regular wages for withholding purposes.

LABORER CLASSIFICATIONS

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**CLASS I** - Blacksmith, Powderman, Burner, Pipe Layer, Air Track Operator, and Pipe Layer Laser Beam Setup.

**CLASS II** - Lead Person on Concrete Pump Hose, Powderman Helper, Semi-Skilled Laborer, Scaffold Builders, Chainman & Rodmen, Grade Checker, Brick Mason Tenders, Plasterer Tender, Concrete Specialist, Cement Finisher Tender, Stone Mason Tender, Tile Setter Tender, Jackhammer Operators, Mortar Mixer, Laborer Operating Bobcat, Laborer Operating Forklift, Pavement Buster Operators, Chipping & Peening Hammer Operators, Riprap Finisher Air Siphon & Air Pump Operator, Concrete Saw Operator, Power Saw Operator, Motorized Buggy Operator, Pipe Layer Helper, Sheeter & Shorers, Post Hole Digger Operator, Asphalt Raker, Lance and/or Water Blaster Operator, Blacksmith Helper, Batch House Scale Operator, Workmen working with Acid Mortar, Workmen working with Acid Brick, Workmen working with Acid, Workmen working with Creosote, Workmen working with Mastic Asphalt, Nozzleman for Gunnite or Sandblasting, Ride or Walk Roller Tampers, Asbestos Removal Worker, Hazardous Waste Worker, Environmental Worker, Vibrator Operator, Lather Tender, Signal Person, Pavement Buster and Chainsaw Operator.

**CLASS III** - Flagmen, Carpenter Tenders, Toolroom Attendant, Janitor, Water Person, Warehouse Person, Landscaper, and Hazardous Waste and Demolition Worker.

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**West Virginia Division of Labor**

**Building  
Construction Rate  
Appendices**

**2007**

materials when used on walls, floors, ceilings, stairs, saddles or any other part of the interior or exterior of the building, or other work not considered a part of the building such as fountains or swimming pools;

4. The finishing of cement floors where additional aggregate of stone is added by spreading or sprinkling on top of the finished base and troweled or rolled into the finish and then the surface ground by grinding machines (when no additional stone aggregate is added to the finished mixture, even though the surface may be ground, the work falls within the occupational title of work description for cement masons); and
5. The carving, cutting and setting of all marble, slate, including slate backboards, stone, albreen, carrara, sanionyx, vitrolite and similar opaque glass, scaglia, marbleitic and all artificial, imitation or case marble of whatever thickness or dimension. This shall apply to all interior work, such as sanitary, decorative and other purposes inside of buildings of every description wherever required, including all polish, honed or sand finish.

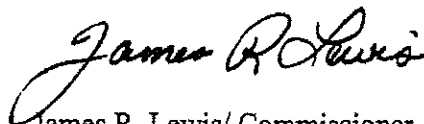
#### **Statement from the Commissioner**

The construction industry is a diverse and dynamic presence in the United States including West Virginia. As such, the industry is continually changing. Every year there are hundreds of new products introduced and applied to construction methodology. This fact causes job assignments to be made that may affect or expand the work description of one or more of the job descriptions provided here. This being the case, the job descriptions heretofore provided are subject to change. The West Virginia Prevailing Wage Act and its regulations provide a means to add classifications if the need arises. That means is provided in 42 CSR 7-10 Amendments of Regulations (10.1) and (10.2) {Rules and Regulations for the West Virginia Prevailing Wage Act} which provide;

(10.1) Any person wishing a revision of any of the terms of the regulations in this part with respect to classifications or any other pertinent facts may submit to the Commissioner a written petition setting forth the changes desired and the reasons for proposing them.

(10.2) The Commissioner, upon inspection of the petition and believing that the grounds are reasonable, may schedule a hearing with due notice to interested persons, or make other provisions for affording interested parties an opportunity to present data, views and arguments relating to any proposed changes.

Therefore, should any contractor or public authority have the need for additional classifications of workers please contact this office at 304-558-7890 to get the process provided by law started.



James R. Lewis/ Commissioner  
West Virginia Division of Labor

2. Heavy/Highway Construction. The subtitles falling within the occupational title work description for truck driver-teamster, is applicable to heavy/highway construction, are as follows:
3. The workers who perform work falling within the occupational title of traffic control service driver include:
  - a. The delivery, installation and pick-up of traffic control devices;
  - b. The unloading and installation of barricades, plastic channelizer drums, safety cones and temporary flashing lights not to exceed one hundred fifteen (115) volts;
  - c. Regular periodic inspections to assure that traffic control devices are clean, clearly visible and properly positioned. Inspection and maintenance includes replacing batteries and bulbs in lights, cleaning reflective material and lenses and repairing or replacing damaged or missing devices when incidental to and part of a public works construction project; and
  - d. Removal of all traffic control devices by loading them on a truck and driving them to a storage yard where they are unloaded.

Groups - See appendix in Building and Heavy and Highway wage rates schedule.

**Tile Setter:** Applies to workers who apply tile to floors, walls, ceilings, stair treads, promenade roof decks, garden walks, swimming pools and all places where tiles may be used to form a finished surface for practical use, sanitary finish or decorative purpose. (tile includes all burned clay products, as used in the tile industry, either glazed or unglazed, all composition materials; all substitute materials in single units up to and including, fifteen inches by twenty inches by two inches ( 15" x 20" x 2") (except quarry tiles larger than nine inches by eleven inches (9" x 11") and all mixtures in the form of cement, plastics and metals that are used as a finished surface.) The work falling within this occupational title of work description includes:

1. The cutting and shaping of tile with saws, tile cutters and biters; and
2. The positioning of tile and tapping it with a trowel handles to affix tile to plaster or adhesive base.

**Terrazzo Worker:** The workers performing work falling within the occupational title of work description for terrazzo worker-marble mason includes;

1. The installing of marble, mosaic, venetian enamel and terrazzo; the cutting and assembling of mosaics and art ceramics; the casting of all terrazzo on the job site; all rolling of terrazzo work;
2. The preparing, cutting, layering or setting of metal, composition or wooden strips and grounds on all bedding above concrete floors or walls; and the laying and cutting of metal, strips, lath or other reinforcement, where used in terrazzo work;
3. The installing of cement terrazzo, magnesite terrazzo, dex-o-tex terrazzo, epoxy matrix terrazzo, exposed aggregate. Rustic or rough wash of exterior or interior of buildings. The mixing or applying of any other kind of mixtures of plastics composed of chips of granules of marble, granite, blue stone, enamel, mother of pearl, quartz, ceramic colored quartz and all other kinds of chips or granules when mixed with cement, rubber, neoprene, vinyl, magnesium chloride or any other resinous or chemical substances used for seamless flooring systems. The applying of binding



where power equipment and rigging are required; all other work established by custom and usage.

**Soft Floor Layer** - Applies to workers who measure, cut, sew, make-up and seam, tape, fit, lay and install and seal and wax materials to be cemented, tacked or otherwise applied to its base, wherever it may be. These materials may be used as shock-absorbing, sound absorbing or decorative coverings. With the exception of terrazzo, magnesite and latex built-up floors, the materials include oil cloth, matting, linen, carpet, synthetic turf, linoleum, vinyl, plastic, rubber, cork, mastic, asphalt, mastipave, tile, wood tile, interlocking and magnetic tile, chalk and bulletin board, non slip or abrasive materials, resilient, decorative seamless surface coatings, monolithic coverings (monolithic shall mean all resilient seamless material such as epoxy, polyethylene, plastics and their derivatives, components and systems) and all other resilient coverings on floors, walls, counters, table tops and ceilings. The work falling within the occupational title of work description includes:

1. The handling of materials at the point of installation;
2. The performing of all necessary preparation and finish work, such as sweeping, scraping, sanding, or chipping dirt and irregularities from base surfaces and filling cracks with putty, plaster, or cement grout to form smooth, clean foundations, drilling holes for sockets and pins;
3. The installing of underlayment, sanding and filling, fitting of metal edgings, metal corners and caps and fitting devices for attachment of these materials;
4. The spreading of adhesive cement over floor to cement foundation material to the floor;
5. The laying of covering on cement; and
6. The rolling of finished floor to smooth it out and press cement into base and covering;

**Sprinkler Fitter:** Applies to workers who perform the installation, adjustments and corrections, repair and dismantling of all fire protection and fire control systems and the installation of all fire piping for tubing, appurtenances and equipment. The work falling within the occupational title includes: The handling and installation of all piping and appurtenances pertaining to sprinkler equipment, including both overhead and underground water mains, fire hydrants and hydrant mains, standpipes and hose connections to the sprinkler systems, sprinkler tank heaters, air lines and thermal systems used in connection with sprinkler and alarm systems, tank and pump connections, and fire protection systems using mulsifyre, spray, water, fog, carbon dioxide (CO 2), gas and foam and dry chemical systems;

**Teamsters:** The workers who perform work falling within the occupational title of work description for truck driver-teamster includes the operation, repair and servicing of mechanical equipment. This occupational title encompasses several sub-classification, with the title and work description considered in light of whether the public works project pertains to building construction or heavy/highway construction;

1. Building Construction. The subtitles falling within the occupational title of work description for truck driver-teamster, as applicable to building construction are as follows:

8. The handling, hoisting and storing of all roofing, damp and waterproofing materials, and
9. The tear-off, removal, or both, of any type of roofing, all spudding, sweeping, vacuuming, cleanup, or a combination of these, of any areas of any type where a roof is to be relayed.

**Roofer/ Heated Coal Tar Product:** This classification applies only when heated product is applied to a vertical surface and/or in a confined area.

**Sheet Metal Worker:** The work performed by this classification of worker shall include the following: the handling, conditioning, assembling, installing, servicing, repairing, altering and dismantling of ductwork for the heating, ventilation and air conditioning system regardless of the materials used and the setting of all equipment and all supports and reinforcements in connection with the system; the installation of expansion and discharge valves, air filters and water filters in heating, ventilation and air conditioning systems; the testing and balancing of air handling equipment and duct work; the forming, rolling, drawing, stamping or pressing of sheet metal shingles, sheet metal tile, sheet metal brick, sheet metal stone and sheet metal lumber, when specified for use as roofing, siding, waterproofing, weather proofing, fire proofing or for ornamental or any other purpose; the performance of sheet metal work specified for use in connection with or incidental to steeples, domes, minarets, look outs, dormers, louvers, ridges, copings, roofing, decks, hips, valleys, gutters, outlets, roof flanges, flashings, gravel stops, leader heads, down spouts, mansards, balustrades, skylights, cornice mouldings, columns, capitols, panels, pilasters, mullions, spandrils and any and all other shapes, forms and design of sheet metal work specified for use as waterproofing, weather proofing, fire proofing, ornamental, decorative or display purposes, or as trim on the exterior of buildings; the installation of sheet metal ceilings and side walls with cornices, mouldings, and waincoting of plain, ornamental, enameled, glazed or acoustic type including sheet metal tile and the application of all necessary wood or metal furring, plastic or other materials, to which the ceilings or side walls are directly applied; the performance of sheet metal work specified in connection with or incidental to direct, indirect or other types of HVAC systems ( including risers, stacks, ducts, S strips, fittings, dampers, casings, recess boxes, outlets, radiator enclosures, exhausts, ventilators, frames, grisses, louvers, registers, cabinets, fans and motors; the installation of air washers, filters, air brushes, housings and a/c chambers; the setting and hanging of a/c units, unit heaters or air-veyor systems and air handling systems regardless of material used; the assembling and setting up all cast iron parts, warm air furnace, all stoker, gas and oil burner equipment used in connection with warm air heating, all sheet metal hoods, casings, wall stacks, smoke pipes, trunk lines, cold air intake, air chambers, vent pipes, frames, registers, dampers and other air regulation devices; the installation of kitchen equipment including ranges, canopies, steam tables, work tables (made of metal), dishwashers, coffee urns, soda fountains, warming closets, sinks, drainboards, garbage chutes ( made of metal), incinerators and refrigerators; the installation of coppersmithing work; the installation of fume hoods, metal toilet partitions, metal lockers, and plain metal shelving; the handling, moving, hoisting and storing of all sheet metal materials on the job site,

3. Assembling, installing, and repairing valves, pipe fittings and pumps. Testing the piping system. Cutting holes in floors and walls for pipes with point and hammer, core drill or both.
4. Installation of distribution lines (water mains, sewer mains, oil and gas lines).
5. Welding of steel pipe joints.
6. Joining ductile iron and plastic pipes by using any method for making joints in the industry when the pipe will be under internal pressure.

**Rofer/ Waterproofer:** Applies to workers who apply and install any and all types of roofing materials, other than sheet metal. The work falling within this occupational title of work description includes:

1. The installation of slate and tile and all substitute materials taking the place of slate and tile used for roofing including flat or promeade slate, with necessary metal flashing to make watertight;
2. The cementing in, on or around slate and tile roofs. The laying of felt or paper beneath the slate and tile. The dressing, punching and cutting of all roof slate or tile either by hand or machinery;
3. The installation of all forms of plastic, slate, slag, gravel; asphalt and composition roofing; rock asphalt mastic when used for damp and waterproofing; prepared paper; compressed paper and chemically prepared paper, and burlap with or without coating. The installation of all damp resisting preparations regardless of the method of application in or outside of building. The installation of damp courses, sheeting or coating on foundation work and tarred roofs. The laying of the tile or brick, when laid in asphalt or pitch tar;
4. The installation and application of new materials used in roofing, water-proofing, encapsulation and containment process including all forms of elastomeric or plastic (elastoplastic), or both, roofing systems, both sheet and liquid applied, whether single-ply or multi-ply. The installation of aggregates or stone, used as a ballast for inverted roofing membrane assembly, or roof of similar construction where insulation is laid over the roofing membrane. The sealing and caulking of seams and joints on these elastoplastic systems to insure water-tightness. The applying of liquid-type elastoplastic preparation for roofing, damp or waterproofing when applied with a squeegee, trowel, roller or spray equipment whether applied inside or outside of a building. The priming of surfaces to be roofed, damp or waterproofed, whether done by roller, mop, swab, three (3) knot brush or spray systems. The waterproofing of all types of preformed panels;
5. The application of all types of spray-in-place such as urethane or polyurethane, and
6. The application of roof insulation, when the insulation material is applied as an integral part of the roofing system, whether the insulation material is applied as the first, last or any other layer in between;
7. The operation and servicing of all kettles, bulk tankers, stationary heating tankers and other types of equipment and tools used to accomplish this work (including heating systems for the operation of the equipment); and compressors for applying roofing material components, roof and mop carts, hydraulics, tools and equipment, be it hand or power, needed to apply waterproofing, insulated and roofing materials;

11. The application of crushed stone, marble or ceramic chips and broken glass where embedded in plaster, or similar materials;
12. The placing of acoustic blocks with any plastic material, regardless of thickness;
13. The placing, by any method, of plaster or composition caps and ornaments;
14. The creating of decorative textures in finish coat by marking surface of coat with brush and trowel or by spattering it with small stones (stucco) where plastering equipment or materials, or both, are used; and
15. The operation and control of all types of plastering machines, including power trowels and floats.

**Plumber:** Applies to workers who install and repair domestic potable water lines, gravity waste disposal systems inside the curb or fence lines, plumbing fixtures such as: bathtubs, sinks and toilets-and appliances such as, dishwashers and water heaters. The work falling within the occupational title of work description for plumber includes:

1. Assembling and installing, piping systems, fixtures and equipment for the transportation of domestic water and sewage. Piping systems installed in structures (for example, buildings, industrial plants) to the first Y,T or connection located outside the building;
2. Cutting, threading and bending pipe. Joining pipes by use of screws, bolts, fittings, solder, welding, brazing and caulking or any other method of making joints in the plumbing industry;
3. Assembling, installing and repairing valves, pipe fittings and pumps. Testing the piping system. Installing and repairing plumbing fixtures, such as sinks, bathtubs, water heaters and water softeners; and
4. Cutting holes in floors and walls for pipes with point and hammer, core drill, or both.

**Pile Driver:** - The work falling within the occupational title of work description for pile driver includes:

1. The handling, layout, driving, cutting and splicing of wood, metal or concrete piping regardless of purpose (for example, sheets ,I-beams, pile caps and welding to piling);
2. The assembly, disassembly and rigging of the pile driving equipment; and
3. The conduct of underwater diving that is incidental to pile driving work.

**Pipe Fitter:** This classification of work applies to workmen who fabricate, install and repair piping systems to include: water and waste processing systems; heating and air conditioning systems, pneumatic controls and delivery systems; powerhouse and all pressurized piping systems; gas, oxygen systems; gasoline systems not for public distribution. The work of this occupational title includes:

1. Piping systems installed in structures (building, industrial plants, hydroelectric plants etc.)
2. Cutting, threading and bending pipe. Joining pipe by use of screws, bolts, fitting, solder, welding and caulking, and any other methods of joining pipe in the pipefitting industry.

strip lines and all machinery and equipment; including those public works defined in West Virginia Code §21-5A-1(4) **Public Improvement.**

- c. Any and all material used in preparation, application or removal of any paint, coatings or applications, including the handling and use of thinners, dryers, sealers, binders, pigments, primers, extenders, air and vapor barriers, emulsions, waxes, stains, mastics, plastics, enamels, acrylics, epoxies, epoxy injection and T-Lock welding, alcalyeds, sheet rubber, foam seamless and tile like coatings, etc.
- d. Any preparation for and removal of any and all materials for finishes; such as deep cleaning, patching, all levels of finishing, skim coatings, pointing, caulking, high pressure water, chemical and abrasive blasting, environmental blasting, wet/ dry vacuum work, chemical stripping, scraping, air tooling, bleaching, steam cleaning, asbestos and lead abatement/ removal (associated with paint applications).
- e. The inspection of all coatings and/ or coating systems during their applications or removal.

Wall Covering work falling under the painter classification shall include all material applied to walls or ceilings with adhesive, staples, tacks, by stretching or adhered by any other method, including all papers, vinyls, flexible woods, fabrics, borders, metals, upholstered wall systems, the fabric covered panels made of plastic/ wood or prefinished products of micor fiberglass, etc., acrovin and various plastic wall coverings such as wainscoat, caps, corner mouldings and accessories; and any and all preparations of walls and ceilings such as scraping or any other methodology for removal of existing materials in preparation for application of any material or product listed above.

**Plasterer:** Applies to workers who apply gypsum, Portland cement, stucco, imitation stone and kindred materials and products to interior walls, ceilings and partitions and to exterior walls of buildings, and finish those materials and products. The work falling within the occupational title of work description includes:

1. The spreading of plaster over laths, masonry or any other base, using trowel; and smoothing the plaster with darby and float for uniform thickness;
2. The application of the various manufacturers' brand names of thin coat or plaster veneer;
3. The application of all bonding agents and mastic;
4. The roughing of undercoat with wire or metal scraper to provide bond for succeeding coat of plaster;
5. The application of all malleable plastic materials and epoxy materials;
6. The setting in place of plasterboard, insulation board, Styrofoam and bead-board, ground, locks, patent dots, cork plates, brownstone and acoustical tile, fiberglass reinforcement and finished products;
7. The plastering of joints, nail holes and bruises on wallboard;
8. The grouting and filling of door bucks, runners and similar installations, in conjunction with plastering operations;
9. The application of scratchcoat, browncoat and finish coat of plaster to wood, metal or board laths successively to all ceilings and walls when finished with terrazzo or tile, and the application of any plastic material to same;
10. The fireproofing of all building assemblies with plaster materials, sprayed fiberglass or similar materials, whether applied to gypsum, metal lath or directly;

Classifications. Also includes all other work established by custom and usage as belonging to this classification.

**Painters:** The work falling within the occupational title of work description for painter includes:

1. Preparation of surfaces. The washing, cleaning, pointing and taping of drywall, regardless of material used, and smoothing of surfaces, using sandpaper, brushes or steel wool. The removal of old paint or other coatings from surfaces, using paint remover, scraper, wire brushing, sandblasting, water blasting, liquid steam or by any other similar process. The filling of nail holes, cracks and joints with putty, plaster or other fillers;
2. Color matching and mixing. The application of paint, varnish, stain, enamel, lacquer, vinyl, wallpaper and other materials of whatever kind of quality applied to walls or ceilings with paste or adhesive, using brushes, spray gun (spray painter) or paint rollers. The application of polyurethane elastomers, vinyl plastics, neoprene, resin, polyester and epoxy as waterproofing or protective coatings to any kind of surface when applied with brushes, spray guns or rollers.
3. Texturing and decorating. The erecting of scaffolding or setting up of ladders to perform the work above ground level. The paperhanging of walls and ceilings with decorative wall coverings made of fabric, vinyl or paper. The preparing of the surface to be covered by applying sizing, which seals the surface and makes the covering stick better. The removal of the old covering by soaking, steaming or applying solvents. The patching of holes and other imperfections before applying the new wall covering. The measuring of the area to be covered; the cutting of the covering into strips of the proper size, the checking of the covering for flaws and the examination of the pattern so it can be matched when the strips are hung. The preparation of paste or other adhesives according to manufacturers' directions, and the brushing or rolling it on the covering. The placing of the strips on the wall or ceiling, to match adjacent patterns. The smoothing of the strips to remove bubbles and wrinkles; the trimming of the top and bottom with a razor blade; and the painting or taping of highway striping, or both; and
4. Cleanup. The cleanup of tools and equipment required in connection with work falling within this occupational title.

Work falling within this occupational title shall also include:

- a. Preparation, application and removal of all types of coatings and coating systems in relation to all painting, decorating, protective coatings, coating and staining of concrete floors and toppings, waterproofing, masonry restoration, fireproofing, fire retarding, metal polishing, refinishing, sealing, lining, fibreglassing, E-Glass fiberglass, carbon fiber, encapsulating, insulating, metalizing, flame spray and the application of exterior insulating finishing systems.
- b. All applications cited above and similar or substitute applications, on all surfaces, interior and exterior which include all structures, buildings, power equipment, bridges, tanks, vats, pipes, stacks, light and high tension poles; parking, traffic and air

Classifications. Also includes all other work established by custom and usage as belonging to this classification.

**Painters:** The work falling within the occupational title of work description for painter includes:

1. Preparation of surfaces. The washing, cleaning, pointing and taping of drywall, regardless of material used, and smoothing of surfaces, using sandpaper, brushes or steel wool. The removal of old paint or other coatings from surfaces, using paint remover, scraper, wire brushing, sandblasting, water blasting, liquid steam or by any other similar process. The filling of nail holes, cracks and joints with putty, plaster or other fillers;
2. Color matching and mixing. The application of paint, varnish, stain, enamel, lacquer, vinyl, wallpaper and other materials of whatever kind of quality applied to walls or ceilings with paste or adhesive, using brushes, spray gun (spray painter) or paint rollers. The application of polyurethane elastomers, vinyl plastics, neoprene, resin, polyester and epoxy as waterproofing or protective coatings to any kind of surface when applied with brushes, spray guns or rollers.
3. Texturing and decorating. The erecting of scaffolding or setting up of ladders to perform the work above ground level. The paperhanging of walls and ceilings with decorative wall coverings made of fabric, vinyl or paper. The preparing of the surface to be covered by applying sizing, which seals the surface and makes the covering stick better. The removal of the old covering by soaking, steaming or applying solvents. The patching of holes and other imperfections before applying the new wall covering. The measuring of the area to be covered; the cutting of the covering into strips of the proper size, the checking of the covering for flaws and the examination of the pattern so it can be matched when the strips are hung. The preparation of paste or other adhesives according to manufacturers' directions, and the brushing or rolling it on the covering. The placing of the strips on the wall or ceiling, to match adjacent patterns. The smoothing of the strips to remove bubbles and wrinkles; the trimming of the top and bottom with a razor blade; and the painting or taping of highway striping, or both; and
4. Cleanup. The cleanup of tools and equipment required in connection with work falling within this occupational title.

Work falling within this occupational title shall also include:

- a. Preparation, application and removal of all types of coatings and coating systems in relation to all painting, decorating, protective coatings, coating and staining of concrete floors and toppings, waterproofing, masonry restoration, fireproofing, fire retarding, metal polishing, refinishing, sealing, lining, fibreglassing, E-Glass fiberglass, carbon fiber, encapsulating, insulating, metalizing, flame spray and the application of exterior insulating finishing systems.
- b. All applications cited above and similar or substitute applications, on all surfaces, interior and exterior which include all structures, buildings, power equipment, bridges, tanks, vats, pipes, stacks, light and high tension poles; parking, traffic and air

deck hands, guard rails on roadways (not on bridges) and temporary signs, pile dike and revetment work, work on underground tunnels less than 25 ft deep where compressed air is not used, abutment and pier hole work 6ft or more below ground, work in coffer dams and footing in rivers, Barco tamper, Jackson or any other similar tamp, cutting torch man (demolition work), liners, curb, gutters, ditch liners, hot mastic kettleman, hot tar applicator, hand blade operators and mortar men on brick or block manholes, rubbing concrete, air tool operator under 65 lbs. (weight of tool), caulker and lead man, chain and concrete saw under 15 horsepower. The unloading, handling, and carrying of concrete reinforcing bars, by hand, to the work area (areas of use), wrecking, stripping, dismantling, cleaning, moving and oiling of all concrete forms, digging and laying sewer tile.

**Lather:** This classification applies to workers that erect horizontal framework to which laths are fastened, using nail, bolts, stud gun, or a combination of these, drills holes in floor and ceiling and drives ends of wooden or metal studs into holes to provide anchor for furring or rock board laths. This classification applies to workers who nail, clip or fasten, all types of wood, wire and metal laths, plasterboard, wallboard, rock board, gypsum, sheet rock and acoustical which take the place of same to walls, ceilings and partitions of buildings to provide supporting base for plaster, fireproofing or acoustical material. This classification applies to workers who erect all metal plastering accessories which are covered or serve as ground, or both, guard, stock or screed for plaster materials, including wire mesh. The installing of carrying bars or purlins, light iron and metal furring of all descriptions, such as rods, channels, flat iron, T-bar, H-bar and other ceiling bars or systems, for the receipt of lath or board. The wiring of plasterer channels to overhead structural framework to provide support for plaster or acoustical ceiling tile and the nailing of plaster grounds (wood or metal strips) to studding to provide a guide for plasterers. This classification of work is now covered by the Carpenter Classification.

**Marble Setter: See Terrazzo Setter**

**Millwright:** Applies to workers who design, build, or repair mills or mill machinery; hoist, dismantle, erect, assemble, line and adjust all machines used in the transmission of power in buildings, factories or elsewhere: unload machines used in the transmission of power in buildings, factories or elsewhere, where power equipment and rigging are required. The work falling within this occupational title of work description includes: the setting of all classes of engines, direct drive motors, dynamos, turbines, generators and air compressors and pumps. The assembling, setting and packing of all compressors and pumps. The placing of all pulleys, sheaves and fly wheels on the listed equipment. The making and setting of all templates and bolts for all machinery requiring same. Dry packing for sole plates. Installation of truck and railroad scales. Installation of trash compactors. Installation of all types of conveyors. The cutting and threading of all bolts. The handling and operating of acetylene and devices for heating, welding and cutting when used in connection with Millwright work.

**Operating Engineer:** Shall include, but not limited to, all work as described in Appendix II of both Building and Heavy & Highway Construction Operating Engineer



installation of metal siding and metal roof decking, regardless of the fastening method, or the object to which it is fastened. The handling, burning, welding and tying of all materials used in reinforced concrete structures. The installation of metal guardrails with metal posts (incidental to bridge construction) and metal posts and steel structures in support of highway signage.

**Laborer:** This classification of worker encompasses several sub classifications, with the title and the work description considered in light of whether the public works project pertains to building construction, heavy construction, highway construction and heavy and highway construction as the case may be. The following are some of the duties performed by this classification of worker: **Please Refer To Appendix I** of the Building Rates Schedule and **Appendix I** of the HEAVY and HIGHWAY Rates Schedule for a list of the respective classes of laborers work. In addition to those classifications are these duties: BUILDING CONSTRUCTION. Material plant man, landscaper, form cleaner, form oilier, cleaning and clearing of all debris for all crafts, loading and unloading, conveying, distributing construction material by hand and collecting and hoisting debris, backfilling of excavations and grading same. The covering of tanks, structures and material piles with tarpaulins or other materials. Cleaning of masonry and other types of walls and windows. Signaling and hoisting of concrete buckets and for all other material handled by laborers. The pouring and placement of concrete. Providing drinking water. Handling and cleaning of concrete chutes. Cleaning of concrete spills and chipping where hand tools are required. Work necessary to remedy defects in concrete caused by leakage, bulging, sagging and shifting of forms when finishing tools are not used. Laying non pressurized pipe for downspout drain lines, header lines or laying of non pressurized conduit, or a combination of these, for the carrying of storm water, waste, sewage, gravity flow lines, catch basins and manholes, effluent lines, originating outside the building and all those lines originating inside the building at the first Y, T or connection outside the building. The handling, erection and dismantling of scaffolding for brick and block layers and cement finishers and plasterers.

**Laborers:** HEAVY and HIGHWAY CONSTRUCTION. In addition to those duties listed in Appendix I of the H&H Rates Schedule the following work is performed by Laborers.

Carpenter tenders, salamander tenders, dump man, ticket takers, flagman, loading trucks under bins, hoppers and conveyors, track men, cement handler, dump man on earth fill, Georgia buggy operator, material batch hopper man, spreader on asphalt machine, material mixer man (except on manholes), coffer dams, riprap, pavers, (rock, brick or block) signal man for materials handled by laborers, scaffolds over 10 ft. not supported from the ground up, skip man on concrete paving, wire mesh setters on concrete paving, work in connection with non pressurized pipelines, such as sewer, water, gas, gasoline, oil, drainage pipe, conduit, tile and duct lines and any other non pressurized pipelines; work performed by hand in connection with hydraulic or general dredging operations, form setters (curb and gutter), puddler (paving only), straw blower nozzleman, asphalt plant platform man, chuck tender, crusher feeder, handling creosote and creosoted materials, working with and handling epoxy materials, topper of standing trees, feeder man on wood pulverizers, board and willow mat weavers and cable tiers on river work,

**Ironworker:** This classification applies to workers that perform work in connection with field fabrication, erection or both, installation, removal and dismantling of structural, architectural and reinforcing iron and steel, ornamental lead, bronze, copper and aluminum and plastics or other materials when used in place of the afore mentioned materials. The work performed within this classification of worker includes:

1. Structural. The unloading, erecting, bolting up, plumbing up, welding and installing of structural steel and fiberglass, including any field application.
2. Reinforcing. The unloading, carrying, placing, and tying of all concrete reinforcing, such as rebar, fiberglass rebar, wire mesh, expanded metal, or post tensioning cable (including the tensioning process) or prestress cables when installed on the job site.
3. Rigging. The unloading, moving, handling, placing and setting of electrical machinery and equipment when rigging of power equipment, or both, is used (with the exception of the setting of electric motors). The assembly and erection of radio and television and other structural steel towers (with the exception of electrical transmission towers). The unloading, handling, moving and placing of machinery to be assembled or dismantled, erected or installed to its approximate position (over anchor bolts).
4. Windows. The installation of metal windows (with the exception of store fronts display windows, curtain walls and metal panels. The caulking of metal to metal and metal to masonry joints.
5. Doors. The erection of curtain type doors (overhead rolling-type doors), heavy industrial type doors when made of metal, fire doors and exterior metal hinged doors that carry a fire underwriters label.
6. Sheeting and decking. The installation of sheeting which is attached to metal framework including metal floor decking. ( S.I.P. forms require a composite crew of ironworkers and carpenters)
7. Metal buildings. The erection and installation of structural steel and sheet metal packaged buildings when they come in a package unit, such as Butler, Delta, Varco Pruden or other name brand packaged buildings. The installation of all doors, windows and insulation (when installed in conjunction with sheeting) in the packaged building. The installation of metal siding and metal roof decking, regardless of the fastening method or the object to which it is fastened.
8. Elevators. The installation of elevator doors for gates manually operated and all elevator enclosures, fronts, facias, sills, frames and bucks.
9. Precast concrete. The unloading and installation / erection of precast bridge girders, single T's, double T's, top panels and tilt-up slabs.
10. Other. The installation of all catwalks, stairways and handrails made of aluminum, bronze or any type of metal, glass or plastic. The installation of ornamental iron, such as revolving doors, gates, handrails, window grills, jail and cell work and chain link fences. The installation of dry storage bins, hoppers, chutes and conveyors where sand ore, coal or any dry component is stored or transferred. The erection, installation, removal, wrecking and dismantling of bridges, viaducts, cableways, tramways and monorail transportation systems. The erection, installation, wrecking, removal and dismantling of river locks, gates, metal forms and railings (including pipe). The erection, installation, removal, wrecking and dismantling of frames in support of boiler systems. The

when used in the place of glass to be set or glazed in its final resting place with or without putty, vinyl, molding, rubber, lead, sealants, silicone and all types of mastics in wood, iron, aluminum, sheet metal or vinyl sash, skylights, doors, frames, stone wall cased, show cases, book cased, sideboards, partitions, and fixtures:

2. The installation of the above materials when in the shop or on the job site, either temporary or permanent, on or for any building in the course of repair, remodel, alteration, retrofit, or construction;
3. The installation and welding of all extruded, rolled or fabricated materials including, but not limited to, all metals, plastics, vinyl, or any other materials that replace same, metal and vinyl tubes, mullions, metal facing materials, corrugated flat metals, aluminum panels, muntins, fascia, trim moldings, porcelain panels, architectural porcelain, plastic panels, unitized panels, skylights, showcase doors, all handrails, and relative materials, including those in any or all types of building related store front, door/window construction and curtain wall systems;
4. The installation of automatic door entrances, door(s) window(s) frame assemblers such as patio sliding or fixed doors, vented or fixed windows, shower doors, bathtub enclosures, storm sash where the glass becomes an integral part of the finished product, including the maintenance of all the above;
5. Bevellers, silverers, scratch polishers, abrasive blasters, flat glass wheel cutting, miter cutters, engravers, hole drilling, machine operations belt machines and all machines used in the processing of glass, automatic beveling, silvering grinding, polishing, unpacking and racking of glass, packing glass, glass cleaners in the shops, mirror cleaning, assembling, framing, and fabrication and assembling of all insulated and non-insulated units, fabrication and mounting of mirrors and the operations of all machines and equipment for these operations;
6. The selecting, cutting, preparing, designing, art painting, and installing of fused glass, thick facet glass in concrete and cementing of art glass, and the assembly and installing or removal of all art glass, engraving, drafting, etching, embossing, designing, abrasive blasting, chipping, glass bending, glass mosaic workers, cutters of all flat and bent glass shade workers and glaziers in lead or other glass metals; which includes the maintenance, cleaning and inspection of all glass-panels and frames of the above. Also the fabrication and distribution of all glass and related products;
7. Any and all transportation, handling, unloading of tools, equipment and materials.
8. Any and all driving of the glaziers trucks.

repair of highway and street lighting and traffic signal systems, cathodic protection systems and ball-field lighting systems.

**Electrical Lineman Operator:** Operates equipment used on the outside line portion of a project. The lineman operator assists linemen in the performance of their work but does not climb or work out of any type of aerial equipment. The lineman operator does not perform any work that requires the use of electricians hand tools.

**Electrical Groundman:** Work performed on the ground to assist the journeyman outside-line construction lineman on work not energized. Groundmen use jack hammers, drills, shovels, picks, tamps, trenching equipment and other such tools for excavating and/or compacting dirt or rock on the outside line portion of a project but do not use electricians hand tools.

**Electrician (Signal and Lighting):** This classification of worker shall perform all the work described under **Electrician (Outside Lineman)** except only with regard to the following types of projects; street lighting and signage, traffic signals, traffic signal controls, airport runway lighting and signage, and campground facility lighting excluding buildings.

**Elevator Constructor:** This classification applies to workers who assemble and install electric and hydraulic freight and passenger elevators, escalators, dumbwaiters and moving walks. The work falling within this occupational title of work description includes: 1. The handling, unloading and hoisting of all equipment to be assembled or installed; in re: to the above named structures; from the time that the equipment arrives at the building site. 2. The wrecking or dismantling of elevator plants, to include elevators, escalators, dumbwaiters, moving walks and all other equipment to be reused, reassembled or reinstalled. 3. The sinking, drilling, boring, digging cylinder wells or backfilling for hydraulic lifts, hydraulic elevators or screw lifts. 4. The layout, erecting and assembling of all elevator equipment (for example, electric, hydraulic, steam, belt, compressed air and hand powered elevators; dumbwaiters, residence elevators, parking garage elevators); the assembly of all escalators, moving walks and link belt carriers. 5. The erecting and assembly of all theater stage and curtain equipment and guides and rigging to them, organ consoles and orchestra elevators. 6. The installing of all wiring, conduit and raceways from the first point of attachment of main feeder terminals on the controller to other apparatus and operating circuits. 7. The operating of temporary cars. 8. The installation of all elevator enclosures, fronts, facias, sills, frame and bucks.

**Glazier:** This classification applies to workers installing, setting, cutting, preparing, fabricating, distributing, handling or removal of the following:

1. Art glass, prism glass, beveled glass, leaded glass, automotive glass, protection glass, plate glass, window glass, pre-glazed windows, mirrors of all types, wire glass, ribbed glass, ground glass. Colored glass, glass chalk boards, structural glass, curtain wall systems, louvers, tempered glass and laminated glass, Thiokol, neoprene, all types of insulating glass units, all plastics or other similar material

wiring and equipment. 4. Measuring, cutting, bending, threading, assembling, forming and installing of all electrical raceways (conduit, wireways, cabletrays), using tools, such as hacksaw, pipe threader, power saw and conduit bender. 5. Installing wire in raceways (conduit, wireways, troughs, cableways). This wire may be service conductors, feeder wiring or branch circuit wiring. 6. Chasing and channeling necessary to complete any electrical work, including the fabrication and installation of duct banks and manholes incidental to electrical, electronic, data, fiber optic and telecommunication installation. 7. Splicing wires by stripping insulation from terminal leads with knife and pliers, twisting or soldering wires together and applying tape or terminal caps. 8. Installing and modifying of lighting fixtures. This includes athletic field lighting when installed on stadium structures or supports other than wooden poles or both; Installing and modifying of all electrical/ fiber optic equipment (AC/ DC motors, variable frequency drives, transformers, reactors, capacitors, motor generators, emergency generators, UPS equipment, data processing systems and annunciator systems where sound is not a part thereof ). 9. Installing raceway systems utilizing conduit, conduit bodies, junction boxes and device boxes for switches and receptacles. This may also include wiring systems utilizing other methods and materials approved by the NEC {National Electrical Code}. 10. Installation of main service equipment, distribution panels, subpanels, branch circuit panels, motor starters, disconnect switches and all other related items. 11. Installing and wiring of instrumentation and control devices as they pertain to heating, ventilating, air conditioning (HVAC) temperature control, energy management systems, building automatism systems, and electrically or fiber optic operated fire/ smoke detection systems where other building functions are controlled. 12. Installing conduit and other raceway longer than ten feet when used for the following: Fire alarm systems, security systems, sound systems, closed circuit television systems or cable television systems, or any system requiring mechanical protection or metallic shielding (telephone systems). 13. Testing continuity of circuits to insure electrical compatibility and safety of components. This includes installation, inspection and testing of all grounding systems including those systems designed for lighting protection. 14. Removing electrical systems, fixtures, conduit, wiring, equipment, equipment supports or materials involved in the transmission and distribution of electricity within the parameters of the building property line if reuse of any of the existing electrical system is required. This may include the demolition, removal and disposal of the electrical system.

**Electrician (Outside Lineman):** Applies to workers that erect and repair transmission poles (whether built of wood, metal or other material), fabricated metal transmission towers, outside substations, switch racks, or similar electrical structures, electric cables and related auxiliary equipment for high voltage transmission and distribution power lines used to conduct energy between generating stations, substations and consumers. The work (overhead and underground) falling within this occupational title of work includes:

1. Construction, repair and dismantling of all overhead and underground electrical installations. The handling and operation of all equipment used to transport men, tools and materials to and from the job site. The framing, trenching, digging and backfilling of vaults, holes, poles and anchors, guying, fastening to the stub-in on concrete footings and pads, assembling of the grillage, grounding of all structures, stringing overhead wire, installing underground wire, splicing and installation of transformers.
2. Construction and

that work. Carpenter and Carpet Layer wage rates and apprenticeship requirements are the same.

**Cement Mason:** This classification applies to workers who perform work on concrete where finishing tools are used. That work includes: the setting of screeds, the rodding (the application of re-bar, and reinforcing wire in Building Construction only), shaping, smoothing and finishing of surfaces of freshly poured concrete floors, walls, sidewalks, curbs, steps and stairways. The finishing of extruded barrier rails or any other concrete surface requiring finishing, using hand tools or power tools, including floats, trowels, screeds and straightedge. The removing of rough or defective spots from concrete surfaces, using grinder or chisel and hammer and patching holes with fresh concrete or epoxy compound preparatory to sacking. The rubbing, chipping and bush-hammering of all concrete foundations, floors, walls, sidewalks, curbs, steps and stairways constructed of concrete. The grouting and dry packing of all equipment, machinery, columns, light posts and fixtures when trowel trade tools are used. The caulking of expansion joint materials and control joints when sawed or hand tooled with regard to all concrete flat work including concrete floors, driveways and sidewalks. The molding of expansion joints and edges, using edging tools, jointers and straightedge. The application of penetrating sealer and primer protective coatings to concrete floors and steps when that application is part of the finishing process. The installation of seamless composition floors and the installation and finishing of epoxy-based coatings or polyester-based lining to all surfaces, when the coatings or linings are applied by spraying or troweling. The sandblasting or water blasting for architectural finish or for the preparation of patching. The cutting of joints with concrete saw for the control of cracks in buildings and sidewalks, driveways, curbs and gutters contiguous to buildings. The setting of concrete curb, gutter and sidewalk forms one (1) board high up to twelve inches (12") and all other work established by custom and usage as belonging to this classification.

**Electrician** - This craft encompasses two sub-classifications: **Inside Wireman** and **Outside Lineman**.

**Electrician (Inside Wireman):** This classification applies to workers who are performing the installation, assembly, construction, inspection, operation and repair of all electrical work within the property lines of any given property (manufacturing plants, commercial buildings, schools, hospitals, power plants and parking lots). This scope of work shall begin at the secondary site of the transformer when the transformer is furnished by the local utility company and the service conductors are installed underground. When service conductors are installed overhead in open air from wooden poles, this scope of work shall start immediately after the first point of attachment to the buildings or structures. The work falling within this occupational title of work description includes 1. Planning and layout of electrical systems that provide power and lighting in all structures. 2. Handling and moving of any electrical materials, equipment and apparatus on the job site where power equipment and rigging are required. 3. Burning, welding, brazing, bending, drilling and shaping of all copper, silver, aluminum, angle iron and brackets to be used in connection with the installation and erection of electrical

devices. Mark cutting and assembly lines on materials, using caulk line, pencil and marking gauges. Shape materials to prescribed measurements and form using hand and power tools. The assembly of these cut and shaped materials using fasteners such as nails, screws, bolts, dowel pins, pegs, glue and other fasteners regardless of type. Erect framework and structures. Verify trueness of structures using square, measuring tape, laser and transit. Apply decorative panels to walls whether inside or outside. Carpenter may be a part of a 'composite crew' (working with ironworker on s.i.p. forms and certain pre-cast concrete projects and other classifications when required by need or determination of higher authority); the installation of ladders, handrails, walkways, platforms, gangways, catwalks made of wood and their bracing as well as shoring and lagging. Install doors, wood and metal windows, bucks and their bracing, including hardware in building framework. Install pallet racks and metal shelving. Install subflooring in buildings and finish flooring when made of wood or wood composite. Install insulation in walls and ceilings, except when used as an integral part of a roof system, regardless of the composition of the insulation. The installation of grounds in walls and ceilings for fastening purposes later, regardless of the classification of worker that will be using such grounds. The installation of wall and roof sheathing on buildings and install beams and trusses made of wood or wood laminate or wood composition. The making, handling and setting of all frames, sashes, blinds, trim and other fixtures (for example, cabinets, bookcases and benches), when made of wood or any wood substitute. The handling and assembly of chairs, seats, bleachers and benches and other furniture in theaters, halls, schools and places of assemblage when the afore mentioned are fastened to floors of any kind. The installation of chalkboards, toilet partitions (plastic laminate, solid plastic and other materials replacing wood). The fitting, assembling, fastening and caulking of countertops regardless of material (wood, plastic or wood replacement materials) including tub and shower enclosures. The installation of wood and metal studs and exterior panels. The handling, sawing, cutting, fitting of drywall (sheetrock, durorock and all other types of gypsum board) and lead lined drywall whether for walls, ceilings, floors, soffits or any use, no matter how it is fastened - nailed, screwed, glued or otherwise, whether applied on the interior or exterior of structures. The installation of corner, wooden and plastic column guards. The handling and installation of acoustical and egg crate ceiling systems in its entirety (hanger wire, grid, moulding, tile) whether vertically or horizontally installed. The installation of all builders hardware, including door tracks of every description. The installation of all weather-strips. The making, fitting and hanging of fly screens for doors, windows and other openings. The installation of wood and hollow metal doors, rollup garage doors, overhead doors or rolling fire doors, automatic doors, channel iron door bucks, glass sliding and bi-fold doors. The installation of access flooring, computer floors and raised or elevated floors. The installation of modular headwall units, laboratory casework, fume hoods and all other work established by custom and usage as belonging to this classification.

**Carpet Layer:** Custom and usage have established this classification as a classification of the carpenter craft. The work of this classification includes the laying of all soft floor coverings regardless of composition and the gluing, cutting, fitting, scribing, stretching, bonding, joining, sewing and all other work preliminary and postliminary incidental to

**Boilermaker:** Applies to workers who assemble, erect and repair boilers, tanks, vats and pressure vessels according to blueprint specifications or industry standards, using hand tools, power tools and equipment. The work of this classification shall include: locating and marking of reference points for columns on plates or foundations, using straightedges, squares, transit and measuring tape; using rigging and/ or cranes to lift parts to specified positions; aligning structures or plate sections, using plumb bobs, levels, wedges, dogs or turnbuckles; drilling, reaming, chipping, caulking and grinding of structures and sections and bolting or welding them together; setting of drums and headers and installation of tubes; riveting, acetylene and or gas burning and cutting, rigging, fitting up, impact machine operating, unloading and handling of material and equipment where power equipment and rigging are required and clean up when that clean up requires the specific skills of this classification of worker and all other work established by custom and usage as belonging to this classification.

**Bricklayers and Stone Masons:** Applies to workers who prepare, lay, set, bed, point, patch, grout, caulk, cut, fit, plumb, align, level, anchor, bolt or weld brick, stone masonry, pre-cast aggregate panels, and all types of artificial or imitation masonry. Also, the workers install expansion joint materials in brick, stone masonry, pre-cast aggregate panels and all types of artificial and imitation masonry. The work of this classification shall include: the unloading of brick and all other masonry materials listed above where power equipment and rigging are required; masonry paving and rip-rapping of all types, with or without the use of mortar; reinforcing of masonry, including the placing, tying and setting of re-bar and wire; the caulking of abutting masonry openings in walls and the installation of expansion joints and false joints in all types of masonry; the waterproofing of all types of masonry; the cleaning, tuck-pointing, sandblasting, steam-cleaning and Guniting work on all types of masonry and all other work established by custom and usage as belonging to this classification.

**Carpenter:** Applies to workers who construct, erect, install and repair structures, structural members and fixtures made of wood, plywood, wallboard and materials that take the place of wood, such as plastic, metals, composites, fiberglass, and Transite sheeting and Cemesto Board, using carpenter hand tools and power tools. Work of this classification shall include: the layout of buildings or structures on the site or plot. The installation of aluminum expansion joints for building and bridge structures as well as concrete strike-off machines; the making and setting of all concrete forms (except curb forms on heavy construction), including establishment of building lines or flow lines (box culverts, bridges) including footing forms. The making of all forms used in "tilt-up" construction including gang forms. The layout, construction and installation of wall and footing forms, all block-outs, wood or steel and the layout and installation of all embedded items; the handling and building of all scaffolds used by carpenters to work from, and all scaffolding used by other crafts (**Except Brick, Block Layers and Cement Masons**) that must be built fourteen feet six inches or higher for normal or specialty use, regardless of purpose; the building of rough wooden structures, such as concrete forms, scaffolds, wooden bridges, trestles, coffer dams, tunnel and sewer supports; welding and burning; make the selection of specified type of lumber or other materials. Prepare layout, using rule, scale, framing square, calipers, trammel points, transit and other



## Prevailing Wage Classification Work Descriptions

**Asbestos and Lead Abatement Worker:** Remove all insulation materials, whether they contain asbestos or not, from mechanical systems ( pipes, boilers, ducts, flues, breechings etc.) that are not going to be scrapped and all other work established by custom and usage as belonging to this classification.

**Asbestos Worker/ Heat and Frost Insulator:** Applies to workers who apply insulation materials to mechanical systems to reduce loss or absorption of heat, prevent moisture condensation and to deaden sound and prevent vibration. The work of this classification shall include the preparation, including the building of enclosures and hanging polyurethane, and physical distribution on the job site of asbestos, cork, plastic, magnesia, or similar materials, or other materials used as a substitute, and used as thermal insulation. The manufacture, fabrication, assembling, molding, handling, erection, spraying, pouring, making, hanging, application, adjusting, alteration, repairing, dismantling, reconditioning, corrosion control and testing of heat or frost insulation, such as asbestos, cork, mineral wall, infusorial earth, mercerized silk, flax, fiber, fire felt, asbestos paper, asbestos curtain, asbestos millboard, fibrous glass, foam glass, Styrofoam, polyurethane, polystyrene, metals, plastics, fibrous matter, roving and resins, and the erection of scaffolding up to 14 ft, working platforms. The work of this classification shall also include the covering, including encapsulation, of boilers, tanks, refrigeration units, evaporators, turbines, fittings, valves, ducts, flues, vats, equipment, hot and cold pipes or any other hot or cold surfaces with the insulation materials listed in this description, used for the purpose of thermal insulation, radiator protection, sound deadeners and the lagging (covering) on piping and any other work established by custom and usage as belonging to this classification. REGARDING the removal of these materials See Asbestos and Lead Abatement Worker and Laborer Class II ( Building Construction Rates.)

**Asbestos Fire Stop Technician:** Workers engaged in the application of materials or devices within or around penetrations and openings in all rated wall or floor assemblies, in order to prevent the passage of fire, smoke, or other gases. The application includes all components involved in creating the rated barrier at perimeter slab edges and exterior cavities, the head of gypsum board or concrete walls, joints between wall or floor components, and sealing of penetrating items and blank openings.

**Laborers II (Performing Asbestos and Lead Abatement):** Remove all insulation materials, whether they contain asbestos or not, from mechanical systems (pipes, boilers, ducts, flues, breechings, etc.) that are going to be scraped. Remove all asbestos containing materials from walls, ceilings, floors, columns and all other non-mechanical structures and surfaces. That removal shall include the sealing, labeling and dropping of scrap material into the appropriate container. After the dropping of the materials, final disposal shall include the loading of all materials removed, bagged and tagged, as well as all clean-up and all unloading, burying and other work required at the disposal site and all other work established by custom and usage as belonging to this classification.

2007 JAN -2 PM 2.00

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

West Virginia Division of Labor  
**Prevailing Wage Classification**  
**Work Descriptions**  
**2007**

## APPRENTICE SCHEDULE

Harrison County  
2007

CRAFT	INTERVAL	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
BOILERMAKER	6 months	70	75	80	85	87.5	90	92.5	95		
BRICKLAYER	1000 hrs	50	60	70	80	90	90				
CARPENTER	Percent	80	70	80	90						
CARPENTER	Hours to	800	2400	4270	6140	8000					
CEMENT MASON	1200 hrs	50	60	70	80	90					
ELECTRICIAN	6 months	40	45	50	55	60	65	70	75	80	85
ELEVATOR MECHANIC	Yearly	50	55	65	70	80					
GLAZIER	1000 hrs	50	60	65	70	75	80	90			
IRONWORKER	6 months	55	55	65	70	75	80	85			
LABORER	1000 hrs	60	70	80	90						
MARBLE SETTER	1000 hrs	50	60	70	80	90	90				
MILLWRIGHT	6 months	80	60	65	70	75	80	85	90	95	95
OPERATING ENGINEER	Yearly	75	80	85							
PAINTER	1000 hrs	50	55	60	70	80	90				
PILEDRIIVER	Hours to	800	2400	4270	6140	8000					
PILEDRIIVER	Percent	60	70	80	90						
PLASTERER	1200 hrs	50	60	70	80	90					
PLUMBER & FITTER	850 hrs	50	55	60	65	70	75	80	85	90	95
ROOFER	1000 hrs	50	65	70	75	80	90				
SHEET METAL WKR.	Yearly	45	50	60	70	80					
SPRINKLER FITTER	6 months	50	50	55	60	65	70	75	80	85	90
STONE MASON	1000 hrs	50	60	70	80	90	90				
TERRAZZO SETTER	1000 hrs	50	60	70	80	90	90				
TILE SETTER	1000 hrs	50	60	70	80	90	90				

NOTE: For Carpet Layer, Drywall Hanger, Soft Floor Layer and Lather use Carpenter Schedule

APPRENTICE RATIO: Contact Federal Bureau of Apprenticeship and Training at (304) 347-5794.

**WEST VIRGINIA DIVISION OF LABOR**  
**Building Construction Wage Rates**

**Harrison County**  
**2007**

<b>CLASSIFICATION</b>	<b>BASIC HOURLY RATE</b>	<b>FRINGE BENEFITS</b>
SOFT FLOOR LAYER	22.00	12.78
SPRINKLER FITTER	27.65	12.90
STONE MASON	27.11	9.18
TEAMSTER CLASS A *	21.64	9.29
TEAMSTER CLASS B *	21.26	9.29
TEAMSTER CLASS C *	21.21	9.29
TEAMSTER CLASS D *	21.16	9.29
TEAMSTER CLASS E *	20.96	9.29
TEAMSTER CLASS F *	20.86	9.29
TERRAZZO - TILE FINISHER	19.00	8.58
TERRAZZO - TILE SETTER	27.11	9.18

NOTE: The allowable ratio of apprentice to journeyman employed in any craft shall not be greater than the prevailing ratio of the locality. The allowable ratio is applied on a daily basis. Contact the Federal Bureau of Apprenticeship and Training for additional information at (304) 347-5794.

\* To apply the wage rates properly use Appendix I, II, III, IV and V.

WEST VIRGINIA DIVISION OF LABOR  
Building Construction Wage Rates

FILED

2007 JAN -2 PM 4:05

Harrison County  
2007

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

CLASSIFICATION	BASIC HOURLY RATE	FRINGE BENEFITS
BOILERMAKER	31.44	15.56
BRICKLAYER	27.11	9.18
BRICKLAYER - POINTER/CAULKER/CLEANER	27.11	9.18
CARPENTER	22.00	12.78
CARPET LAYER	22.00	12.78
CEMENT MASON	21.89	10.68
DRYWALL HANGER	22.00	12.78
ELECTRICIAN	24.05	16.14
ELEVATOR HELPER	24.38	15.07
ELEVATOR MECHANIC	34.83	15.07
GLAZIER	25.99	5.32
IRON WORKER ERECTOR *	24.07	15.10
IRON WORKER FENCE ERECTOR *	24.07	15.10
IRON WORKER JOURNEYMAN *	24.07	15.10
IRON WORKER REINFORCING *	24.07	15.10
IRON WORKER SHEETER *	24.07	15.10
IRON WORKER STRUCTURAL *	24.07	15.10
LABORER CLASS I *	19.72	7.90
LABORER CLASS II *	19.29	7.90
LABORER CLASS III *	18.93	7.90
LABORER FLAGMAN	16.58	7.90
LATHER	22.00	12.78
MARBLE FINISHER	19.00	8.58
MARBLE SETTER	27.11	9.18
MILLWRIGHT	27.34	12.99
OPERATING ENGINEER I *	26.61	15.43
OPERATING ENGINEER II *	26.26	15.43
OPERATING ENGINEER III *	25.26	15.43
OPERATING ENGINEER IV *	20.66	15.43
PAINTER	21.34	10.21
PILEDRIVER	22.50	12.78
PLASTERER	21.24	10.68
PLUMBER/FITTER	25.73	18.80
ROOFER/HEATED COAL TAR PRODUCT	22.99	8.68
ROOFER/WATER DAMP PROOFER	22.49	8.68
SHEET METAL WORKER	24.91	15.10

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

WEST VIRGINIA DIVISION OF LABOR  
Building Construction Wage Rates

Harrison County  
2007

<b>CLASSIFICATION</b>	<b>BASIC HOURLY RATE</b>	<b>FRINGE BENEFITS</b>
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NOTE: The allowable ratio of apprentice to journeyman employed in any craft shall not be greater than the prevailing ratio of the locality. The allowable ratio is applied on a daily basis. Contact the Federal Bureau of Apprenticeship and Training for additional information at (304) 347-5794.

\* To apply the wage rates properly use Appendix I, II, III, IV and V.

## TERMS & CONDITIONS

### No Federal Government Obligations to Third Parties

(1) The WV Division of Public Transit and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the WV Division of Public Transit, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the Federal Transit Administration. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### Program Fraud and False or Fraudulent Statements or Related Acts

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the Federal Transit Administration (FTA) assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### Exclusionary or Discriminatory Specifications

The Contractor agrees that it will comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by the WV Division of Public Transit to support procurements using exclusionary or discriminatory specifications.

### Geographic Restrictions

The Contractor agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by FTA.

### Access to Records and Reports

The Contractor agrees to permit the WV Division of Public Transit, the FTA Administrator, or their authorized representatives, including any PMO Contractor, access to the contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the WV Division of Public Transit, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto, Reference 49 CFR 18.39(i)(11). FTA does not require the inclusion of these requirements in subcontracts.

### Civil Rights

The following requirements apply to the underlying contract:

(1) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans With Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive



Order 11246 Relating to Equal Employment Opportunity, " 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age. In accordance with the Age Discrimination Act of 1975, as amended, 29 U.S.C. §§ 6101 et seq. and implementing regulations, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities. In accordance with Section 102 of the Americans With Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans With Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

### Energy Conservation

The Contractor agrees to comply with, and obtain the compliance of its subcontractors, with mandatory standards and policies relating to energy efficiency contained in applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

### Environmental Regulations

The Contractor agrees to comply with all applicable standards, orders, or requirements regarding Federal and State laws imposing environmental and resource conservation requirements that may apply to the contract. A listing of possible requirements is available for the Contractor's review in Section 25 of the FTA Master Agreement MA(9), dated 10-1-02.

The Contractor agrees to comply with all applicable standards, orders, or requirements issued under Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR, Part 15), which prohibits the use under nonexempt federal contracts, grants or loans of facilities included on the EPA list of violating facilities. Any violations shall be reported to the Division of Public Transit who will forward the report to the Federal Transit Administration and to the US EPA Administrator for enforcement (9EN-329).

### Clean Air & Clean Water Requirements

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the WV Division of Public Transit and understands and agrees that the WV Division of Public Transit will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided from FTA.

### Application of Federal, State and Local Laws and Regulations

To achieve compliance with changing federal, state and local requirements, the Contractor shall note that federal, state and local requirements may change and the changed requirements will apply to this Contract as required.

### Contract Work Hours and Safety Standards Act

The Contractor shall comply with Section 102 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 et seq., esp. § 3702 & 3704) as supplemented by Department of Labor Regulations (29 CFR, § 5 & 29 CFR § 1926) as they involve the employment of mechanics and laborers.

Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (2) of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (2) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (2) of this section.

Withholding for Unpaid Wages and Liquidated Damages. The WV Division of Public Transit shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to

be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (3) of this section.

**Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

**Payrolls and Basic Records.** Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR .5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

**Contract Work Hours and Safety Standards Act** (i) The contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333 and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts** The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

#### **Davis-Bacon Act**

(1) **Minimum wages** – (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provision of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** – The WV Division of Public Transit shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the WV Division of Public Transit may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** – (1) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the WV Division of Public Transit for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

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

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

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

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

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

(4) **Apprentices and trainees** – (i) **Apprentices** – Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees** – Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

(6) **Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

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

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S. C. 1001.

#### **Privacy Act**

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

#### **Bankruptcy**

Upon entering of a judgment of bankruptcy or insolvency by or against a Contractor, the WV Division of Public Transit may terminate this Contract for cause.

#### **Prohibited Interest**

No employee, officer, board member, agent or their family members of the WV Division of Public Transit may participate in the selection, award, or administration of a Contract supported by Federal funds if a real or apparent conflict of interest is involved. Such a conflict could arise when any of the parties mentioned above have a financial or other interest in the Contractor selected for the Contract.

#### **Preference for Recycled Products**

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

#### **Hold Harmless**

The Contractor agrees to protect, defend, indemnify and hold the WV Division of Public Transit, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this Contract and/or the performance hereof. Without limiting the generality of the foregoing, any and all such claims, etc. relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any other tangible or intangible personal or property rights, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decrees of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his/her sole expense and agrees to bear all other costs and expenses related thereto, even if such claim is groundless, false or fraudulent.

#### **Licensing and Permits**

The Contractor shall be appropriately licensed for the work required as a result of the Contract. The cost for any required licenses or permits shall be the responsibility of the Contractor. The Contractor is liable for any and all taxes due as a result of the Contract.

#### **Compliance with Laws and Permits**

The Contractor shall give all notices and comply with all existing and future federal, state and municipal laws, ordinances, rules, Regulations, and orders of any public authority bearing on the performance of the Contract, including, but not limited to, the laws referred to in these provisions of the Contract and the other Contract documents. If the Contract documents are at variance therewith in any respect, any necessary changes shall be incorporated by

appropriate modification. Upon request, the Contractor shall furnish to the WV Division of Public Transit certificates of compliance with all such laws, orders, and Regulations.

#### **Cargo Preference**

The Contractor agrees:

To utilize privately owned United States--Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States--Flag commercial vessels;

To furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on board" commercial ocean bill of lading in English for each shipment of cargo described in the paragraph above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Division of Public Transit (through the Contractor in the case of a subcontractor's bill of lading.)

To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

#### **Federal Regulation Changes**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement (Form FTA MA(12) dated October 1, 2005) between the WV Department of Transportation, Division of Public Transit and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this contract.

#### **Severability**

In the event any provision of the Contract is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of the Contract and each provision of the Contract will be and is deemed to be separate and severable from each other provision.

#### **FTA Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provision. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any WV Division of Public Transit requests which would cause the WV Division of Public Transit to be in violation of the FTA terms and conditions.

#### **Fly America**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

#### **Prohibited Interest**

No employee, officer, board member, agent or their family members of the Division of Public Transit may participate in the selection, award, or administration of a Contract supported by Federal funds if a real or apparent conflict of interest is involved. Such a conflict could arise when any of the parties mentioned above have a financial or other interest in the Contractor selected for the Contract.

#### **Buy America Certification**

Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offerer must submit to the Division of Public Transit the appropriate Buy America certification on **Bid Form #7** with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

#### **Debarment and Suspension**



This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder certifies as follows:

The certification in this clause is a material representation of fact relied upon by the WV Division of Public Transit. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to remedies available to the WV Division of Public Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions. All Contractors shall be required to certify that they are not on the Comptroller General's list of ineligible contractors on **Bid Form #9**.

#### **Restrictions on Lobbying**

Every Contractor who applies or bids for an award of \$100,000 or more shall file the certification on **Bid Form #10** required by C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of the registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Division of Public Transit.

#### **Amendments to Solicitation/Addendum Acknowledgment**

A. The State of West Virginia reserves the right to amend any element or part of these bid documents and specifications and/or change the bid opening date and time, up to the time and date that bids are due. In this event, all potential Contractors that have received a copy of these contract documents and specifications shall be notified of the postponement and the new time and date that bids will be due. Such notification shall be mailed or otherwise provided. Any bids received in accordance with the original bid due date shall be held unopened till the new bid opening date.

B. In the event that amendments are issued by the State fourteen (14) or more days prior to the original bid due date, the original date and time established for the receipt of bids, at the State's option, may or may not be changed. The addendum notification sent by the State shall contain either a statement that the bid due date remains as previously established or shall provide a new time and date if the bid due date is changed.

C. In the event that addenda are issued by the State, Contractors must complete the Addendum Acknowledgment form contained within these contract documents and specifications and submit that form with their bid. **Bid Form #11** shall be used for this purpose.

#### **Metric System**

To the extent required by the U.S. Department of Transportation or the Federal Transit Administration, the Contractor agrees to use the metric system of measurement in its Contract activities, as may be required by 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by the U.S. Department of Transportation or the Federal Transit Administration. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

#### **Patent Infringement**

The Contractor shall advise the Division of Public Transit of any impending patent suit and shall provide all information available. The Contractor shall defend any suit or proceeding brought against the Division of Public Transit based on a claim that any equipment, or any part thereof, furnished under this contract constitutes an infringement of any patent, and the Contractor shall pay all damages and costs awarded therein, excluding incidental and consequential damages, against the Division of Public Transit. In case said equipment, or any part thereof, is in such suit held to constitute infringement and use of said equipment or parts is enjoined, the Contractor shall, at its own expense and its option, either procure for the Division of Public Transit the right to continue using said equipment or part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

#### **Seismic Safety**

Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

#### **Bid Protest Procedures**

##### **1. Filing of Protest(s)**

Protests based on a violation of State law or rule must be filed no later than five (5) working days after issuance by the Purchasing Division of the notice of intent to award the contract or purchase order. Protests based on restrictive bid specifications or alleged improprieties in any type of solicitation, which are apparent prior to the bid opening or closing date for receipt of bids or proposals, must be filed no later than five (5) working days prior to the bid opening or closing date. Any other protest must be filed no later than five (5) working days following award of the contract or purchase order.

The Contractor is responsible for knowing the bid opening and award dates. Protests filed after the time frames specified above will not be considered. In addition, after these time frames, protests may not be amended, altered or changed.

All protests must be in writing and filed with the WV Purchasing Division containing the following:

- a) Include the name and address of the protester.
- b) Identify the requisition number of the bid or the purchase order number.
- c) Contain a statement of the grounds for protest and any supporting documentation.
- d) Indicate the ruling or relief desired from the WV Purchasing Division.

**Failure to submit this information shall be grounds for rejection of the protest by the Director of the Purchasing Division.**

No formal briefs or other technical forms of pleading or motion are required, but a protest and other submission should be concise, logically arranged, and clear.

The protest must be filed in writing with the:

Director  
WV Purchasing Division  
2019 Washington Street, East  
P. O. Box 50130  
Charleston, WV 25305-0130

with a copy of the protest sent to the:

Division of Public Transit  
Building 5, Room 830  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0432

To expedite handling, the address should include "**ATTENTION: Bid Protest – Bid #PTR07036.**"

Protests received timely will be reviewed and a written decision issued. **The Director of the WV Purchasing Division has the authority to make the final determination on any protest.**

## 2. Protest Review

The Purchasing Director or his/her designee shall review the matter of protest and issue a written decision. A hearing may be conducted at the option of the Purchasing Director or assigned designee.

## 3. Division of Public Transit Report/Response

The Division of Public Transit shall submit a complete report/response on the protest to the Director of the WV Purchasing Division responding in detail to each substantive issue raised in the protest, with a copy to the protester, as expeditiously as possible but not later than twenty-five (25) working days after being notified of the protest.

## 4. Withholding of Award

When a protest has been filed before award, the WV Purchasing Division will not make an award prior to the resolution of the protest, and when a protest has been filed before the opening of bids, the WV Purchasing Division will not open bids prior to the resolution of the protest, unless the WV Purchasing Division determines that:

- a) The items to be procured are urgently required; or
- b) Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c) Failure to make prompt award will otherwise cause undue harm to a recipient, the Division of Public Transit or the State of West Virginia.

In the event that the WV Purchasing Division determines that the award is to be made during the pendency of a protest, the Division of Public Transit will notify the Federal Transit Administration (FTA) prior to making such award.

## 5. Request for Reconsideration

Reconsideration of a decision by the WV Purchasing Division may be requested by the protester or any party involved in the protest. The request for reconsideration must be in writing, made to the Director of the Purchasing Division and shall contain the following:

- a) Include the name and address of the aggrieved party.



- b) Identify the requisition number of the bid or the purchase order number.
- c) Contain a detailed statement of the grounds for reconsideration with supporting documentation; and a statement of whether a hearing is requested.
- d) Indicate the ruling or relief desired from the WV Purchasing Division.

Request for reconsideration of a decision of the WV Purchasing Division shall be filed not later than five (5) working days after the initial written decision. The protest shall not be considered pending during the five( 5) working day period specified in this paragraph.

In the event a hearing is requested by the aggrieved party, the Purchasing Director, or his or her designee, will set a time and place for the hearing for full review of the matter.

If no hearing is requested, the Purchasing Director, or his or her designee, will review the request for reconsideration and issue a written decision. If a hearing is requested, the Purchasing Director, or his or her designee, will hold the hearing and then issue a written decision.

#### 6. Refusal of Protests

The State of West Virginia may refuse to decide any protest or reconsideration where the matter involved is one of the following:

- a) the protest is the subject of litigation before a court of competent jurisdiction;
- b) the protest has previously been decided on the merits by a court of competent jurisdiction;
- c) the protest has been decided in a previous protest.

The provisions do not apply where the court requests, expects, or otherwise expresses interest in the decision of the State.

#### 7. Appeals to the Federal Transit Administration (FTA)

Under the Federal Transit Administration's Circular 4220.1E, the Federal Transit Administration's (FTA's) review of any protest will be limited to:

- a) Failure of the Division of Public Transit to have or adhere to its written bid protest procedures, or failure of the Division of Public Transit to review a complaint or protest.
- b) Alleged violations on other grounds are under the jurisdiction of the appropriate State or local administrative authorities.
- c) Alleged violations of a specific Federal Law or regulation that provides an applicable complaint procedure shall be submitted and processed in accordance with that Federal Law or regulation. See, e.g., Buy America Requirements, 49 C.F.R. Part 661 (Section 661.15); Participation by Minority Business Enterprise in Department of Transportation Programs, 49 C.F.R. Section 26.89.
- d) The Federal Transit Administration will only review protests submitted by an actual or prospective bidder, whose direct economic interest would be affected by the award of the Contract or by failure to award the Contract. The Federal Transit Administration reserves the right not to participate in the funding of any Contract awarded pending resolution of a protest to them.
- e) An appeal to the Federal Transit Administration must be received by the cognizant FTA Regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the WV Division of Public Transit or other basis of appeal to FTA.

## REQUIRED BID FORMS

The following certifications must be properly **completed and furnished by the OFFERER as part of the bid**. Failure to submit any of these certifications **shall deem the bid non-responsive**.

**BID**

BF#1

Proposal of \_\_\_\_\_ hereinafter called Bidder, organized and existing under the laws of the State of \_\_\_\_\_ doing business as \_\_\_\_\_ \*. To the West Virginia Division of Public Transit, hereinafter called OWNER.

In compliance with you Advertisement for Bids, Bidder hereby proposed to perform all work for the construction of the Central West Virginia Transit Authority Roof Replacement in Clarksburg, Harrison County, West Virginia in strict accordance with the Contract Documents, within the time and at the prices stated herein.

By submission of this Bid, each Bidder certifies, and in the case of a joint Bid, each party hereto certifies as to his own organization, that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

Bidder hereby agrees to commence work under this Contract on or before a date to be specified in the Notice to Proceed and to obtain substantial completion and final completion for the Project as called for in these Contract Documents.

NOTE: Bids include all applicable taxes, permits, and fees.

\* Insert "a corporation," "a partnership," or "an individual" as applicable.

BF#2

**GENERAL CONTRACTOR**

**GENERAL WORK** This price to include all work shown and noted in the Contract Documents. The General Contractor shall be responsible for the coordination, scheduling, and normal administrative activities of the project.

In the event of a difference between the written amount and the number amount, the written amount shall prevail.

The Bidder understands that to the extent allowed by applicable Codes, the Owner reserves the right to waive any informality or irregularity in any Bid or Bids and to reject any or all Bids in whole or in part; to reject a Bid not accompanied by the required bid security or by other data required by the Bidding Documents; to reject any condition of the Bid by the Bidder that is in any way inconsistent with the requirements, terms, and conditions of the Bidding Documents; or to reject a Bid that is in any way incomplete or irregular.

The Bidder, if successful and awarded a Contract, agrees that the work is to be substantially complete 90 days after Notice To Proceed is issued or 15 days after the encumbrance date of the Purchase Order if Notice to Proceed has not been received. The Bidder agrees to achieve Final Completion within 30 consecutive calendar days after the substantial completion. Liquidated damages shall be assessed at a rate of \$200 per day if substantial completion is not obtained within 90 calendar days of the Contractor's proceed date and liquidated damages shall be assessed at \$100 per day if final completion is not achieved within 30 calendar days of substantial completion.

BF#3

**Base Bid**

\_\_\_\_\_

(Amount to be shown in both words and numbers \$ \_\_\_\_\_)



Page \_\_\_\_\_ BC-44 PO#PTR07036  
Spending Unit: West Virginia Dept. of  
Transportation/Division of Public Transit

BF- 4

AIA Document A305

# Contractor's Qualification Statement

## 1986 EDITION

*This form is approved and recommended by The American Institute of Architects (AIA) and The Associated General Contractors of America (AGC) for use in evaluating the qualifications of contractors. No endorsement of the submitting party or verification of the information is made by the AIA or AGC.*

The Undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

SUBMITTED TO:

ADDRESS:

SUBMITTED BY:

NAME:

ADDRESS:

PRINCIPAL OFFICE:

- Corporation
- Partnership
- Individual
- Joint Venture
- Other

NAME OF PROJECT (if applicable):

TYPE OF WORK (file separate form for each Classification of Work):

\_\_\_\_\_ General Construction

\_\_\_\_\_ Plumbing

\_\_\_\_\_ Other \_\_\_\_\_

(please specify)

\_\_\_\_\_ HVAC

\_\_\_\_\_ Electrical

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3.4 On a separate sheet, list major construction projects your organization has in progress, giving the name of project, owner, architect, contract amount, percent complete and scheduled completion date.

3.4.1 State total worth of work in progress and under contract:

3.5 On a separate sheet, list the major projects your organization has completed in the past five years, giving the name of project, owner, architect, contract amount, date of completion and percentage of the cost of the work performed with your own forces.

3.5.1 State average annual amount of construction work performed during the past five years:

3.6 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.

#### 4. REFERENCES

4.1 Trade References:

4.2 Bank References:

4.3 Surety:

4.3.1 Name of bonding company:

4.3.2 Name and address of agent:



6. SIGNATURE

6.1 Dated at this 19 day of

Name of Organization:

By:

Title:

6.2

M being  
duly sworn deposes and says that the information provided herein is true and sufficiently complete so as not to be  
misleading.

Subscribed and sworn before me this 19 day of

Notary Public:

My Commission Expires:



CAUTION: You should sign an original AIA document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

BID FORM #  
BF6

CONTRACTORS LICENSE

WEST VIRGINIA STATE CODE 21-11-2 REQUIRES THAT ALL PERSONS DESIRING TO PERFORM CONTRACTING WORK IN THIS STATE MUST BE LICENSED. THE WEST VIRGINIA CONTRACTORS LICENSING BOARD IS EMPOWERED TO ISSUE THE CONTRACTORS LICENSE. APPLICATIONS FOR A CONTRACTORS LICENSE MAY BE MADE BY CONTACTING THE WEST VIRGINIA DIVISION OF LABOR, CAPITOL COMPLEX, BUILDING 3, ROOM 319, CHARLESTON, WV 25305. TELEPHONE: (304) 558-7890.

WEST VIRGINIA STATE CODE 21-11-11 REQUIRES ANY PROSPECTIVE BIDDER TO INCLUDE THE CONTRACTOR'S LICENSE NUMBER ON THEIR BID.

**BIDDER TO COMPLETE AND SUBMIT WITH BID:**

**CONTRACTOR'S NAME:** \_\_\_\_\_

**CONTRACTOR'S LICENSE NO:** \_\_\_\_\_

**THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FURNISH A COPY OF THEIR CONTRACTORS LICENSE PRIOR TO ISSUANCE OF A PURCHASE ORDER/CONTRACT.**

**BID FORM #7**  
**BUY AMERICA CERTIFICATION**

*Bidder or offerer to complete correct certification.*

**Certificate of Compliance with Section 165(a)**

The bidder or offerer hereby certifies that it will comply with the requirements of section 165(a) of the Surface Transportation Act of 1982, as amended, and the applicable regulations in 49 CFR part 661.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**Certificate for Non-Compliance with Section 165(a)**

The bidder or offerer hereby certifies that it cannot comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, but it may qualify for an exception to the requirement pursuant to section 165(b)(2) or (b)(4) of the Surface Transportation Act of 1982, as amended, and the regulations in 49 CFR 661.7.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**BID FORM # 8****VENDOR'S CERTIFICATION OF  
UNDERSTANDING AND ACCEPTANCE**

The Contractor hereby certifies that all Technical Specifications and Contract Terms and Conditions have been carefully reviewed, are fully understood and shall be adhered to in performance and completion of any contract resulting from this bid.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

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

**SPECIFICATION COMPLIANCE**

**NOTE: Please check if what is offered is in exact compliance with specifications. Any discrepancies must be listed as an attachment to the bid proposal. Exact dimensions and/or descriptions must be provided as a part of the Contractor's bid proposal when submitted.**

\_\_\_\_\_ Bid proposal submitted meets and/or exceeds all specification requirements.

\_\_\_\_\_ Bid proposal submitted contains deviations from specification requirements. Detailed descriptions of these deviations have been provided with this bid proposal.

**BID FORM #9****CERTIFICATION OF PRIMARY PARTICIPANT REGARDING  
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract),

\_\_\_\_\_ (COMPANY NAME) certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE PRIMARY PARTICIPANT (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTRACT),

\_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

\_\_\_\_\_  
Signature and Title of Authorized Official

**BID FORM #10****CERTIFICATION OF RESTRICTIONS ON LOBBYING**

The undersigned (Vendor, Contractor) certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. [as amended by "Government Wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Vendor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Vendor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

BID BOND PREPARATION INSTRUCTIONS

AGENCY (A)
RFQ/RFP# (B)

Bid Bond

- (A) WV State Agency
(Stated on Page 1 "Spending Unit")
Request for Quotation Number (upper
right corner of page #1)
(C) Your Company Name
(D) City, Location of your Company
(E) State, Location of your Company
(F) Surety Corporate Name
(G) City, Location of Surety
(H) State, Location of Surety
(I) State of Surety Incorporation
(J) City of Surety Incorporation
(K) Minimum amount of acceptable bid
bond is 5% of total bid. You may state
"5% of bid" or a specific amount on
this line in words.
(L) Amount of bond in figures
(M) Brief Description of scope of work
(N) Day of the month
(O) Month
(P) Year
(Q) Name of Corporation
(R) Raised Corporate Seal of Principal
(S) Signature of President or Vice
President
(T) Title of person signing
(U) Raised Corporate Seal of Surety
(V) Corporate Name of Surety

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned,
(C) of (D), (E)
as Principal, and (F) of (G),
(H), a corporation organized and existing under the laws
of the State of (I) with its principal office in the City of
(J), as Surety, are held and firmly bound unto The State
of West Virginia, as Obligee, in the penal sum of (K)
(\$ (L)) for the payment of which, well and truly to be made,
we jointly and severally bind ourselves, our heirs, administrators, executors,
successors and assigns.

The Condition of the above obligation is such that whereas the Principal
has submitted to the Purchasing Section of the Department of Administration
a certain bid or proposal, attached hereto and made a part hereof to enter into a
contract in writing for (M)

NOW THEREFORE.

(a) If said bid shall be rejected, or
(b) If said bid shall be accepted and the Principal shall enter into a
contract in accordance with the bid or proposal attached hereto and shall furnish
any other bonds and insurance required by the bid or proposal, and shall in all
other respects perform the agreement created by the acceptance of said bid then
this obligation shall be null and void, otherwise this obligation shall remain in full
force and effect. It is expressly understood and agreed that the liability of the
Surety for any and all claims hereunder shall, in no event, exceed the penal
amount of this obligation as herein stated

The Surety for value received, hereby stipulates and agrees that the
obligations of said Surety and its bond shall be in no way impaired or affected by
any extension of time within which the Obligee may accept such bid: and said
Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their
hands and seals, and such of them as are corporations have caused their corporate
seals to be affixed hereto and these presents to be signed by their proper officers,
this (N) day of (O), 20 (P)

(W) Signature of Attorney in Fact of the
Surety
NOTE: Dated, Power of Attorney with Raised
Surety Seal must accompany this bid
bond.

Principal Corporate Seal (R)
(U)
Surety Corporate Seal (V)
(Name of Principal)
By (S)
(Must be President or
Vice President)
(T)
Title
(W)
Attorney-in-Fact

IMPORTANT - Surety executing bonds must be licensed in West Virginia
to transact surety insurance. Corporate seals must be affixed, and a power of
attorney must be attached.

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_, as Principal, and \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_  
\_\_\_\_\_ with its principal office in the City of \_\_\_\_\_, as Surety, are held and firmly bound unto the State  
of West Virginia, as Obligee, in the penal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) for the payment of which,  
well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns.

The Condition of the above obligation is such that whereas the Principal has submitted to the Purchasing Section of the  
Department of Administration a certain bid or proposal, attached hereto and made a part hereof, to enter into a contract in writing for  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW THEREFORE,

- (a) If said bid shall be rejected, or
- (b) If said bid shall be accepted and the Principal shall enter into a contract in accordance with the bid or proposal attached  
hereto and shall furnish any other bonds and insurance required by the bid or proposal, and shall in all other respects perform the  
agreement created by the acceptance of said bid, then this obligation shall be null and void, otherwise this obligation shall remain in full  
force and effect. It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event,  
exceed the penal amount of this obligation as herein stated.

The Surety, for the value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no  
way impaired or affected by any extension of the time within which the Obligee may accept such bid, and said Surety does hereby  
waive notice of any such extension.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hands and seals, and such of them as are corporations  
have caused their corporate seals to be affixed hereunto and these presents to be signed by their proper officers, this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Principal Corporate Seal

\_\_\_\_\_  
(Name of Principal)

By \_\_\_\_\_  
(Must be President or  
Vice President)

\_\_\_\_\_  
(Title)

Surety Corporate Seal

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
Attorney-in-Fact

IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance. Corporate seals must be affixed,  
and a power of attorney must be attached.



STATE OF WEST VIRGINIA  
Purchasing Division

**PURCHASING AFFIDAVIT**

**West Virginia Code §5A-3-10a states:** No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owned is an amount greater than one thousand dollars in the aggregate

**DEFINITIONS:**

“Debt” means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers’ compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

“Debtor” means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. “Political subdivision” means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. “Related party” means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

**EXCEPTION:** The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers’ compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

**LICENSING:** Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State’s Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

**CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency’s policies, procedures and rules. Vendors should visit [www.state.wv.us/admin/purchase/privacy](http://www.state.wv.us/admin/purchase/privacy) for the Notice of Agency Confidentiality Policies.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), it is hereby certified that the vendor acknowledges the information in this said affidavit and are in compliance with the requirements as stated.

Vendor’s Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_