

**REQUEST FOR PROPOSALS #OCLS-19-003  
ROOFING CONTRACTOR SERVICES FOR  
OCLS Eatonville Branch Library**

**Issue Date: May 6, 2019**

**Due Date: June 13, 2019**

**PURPOSE:**

The Orange County Library System (LIBRARY), an independent special taxing district to the State of Florida, is soliciting sealed written proposals from Florida-licensed roofing contractors (RC) to replace the roof at its Eatonville Branch. The responses to this Request for Proposals (RFP) are to include the roofing construction services through the final certificate of occupancy/completion. Copies of the Request for Proposals may be obtained from the LIBRARY's RFP Project Coordinator noted below.

**RFP PROJECT COORDINATOR:**

To ensure that your Proposal is responsive, you are urged to request clarification or guidance on any issues involving this solicitation before submission of your response. Your communications concerning this RFP should be directed in writing to the RFP Project Coordinator listed below.

Name: Tami L. Berry, Facilities and Operations Department Head  
E-Mail: OCLSBIDS@OCLS.info

Proposers shall not contact any member of the LIBRARY or the LIBRARY's Board of Trustees (except as provided below) regarding this Proposal until such time as a contract is awarded. All inquiries pertaining to this Request for Proposals must be directed in writing through the RFP Project Coordinator noted above.

**ORAL INTERPRETATION:**

No oral interpretation of this Request for Proposals shall be considered binding. The LIBRARY shall be bound by information and statements only when such statements are written and executed under the authority of the LIBRARY's Chief Financial Officer.

**SOLICITATION CANCELLATIONS:**

The LIBRARY reserves the right, and the LIBRARY's Chief Financial Officer has absolute and sole discretion, to cancel a solicitation at any time prior to approval of the award by the LIBRARY's Board of Trustees when such approval is required. The decision to cancel a solicitation cannot be the basis for a protest.

**DRAFT CONTRACT:**

The contract that the LIBRARY intends to use for award is a modified AIA 104-2017 Standard Form of Agreement, a copy is enclosed for reference. Any exceptions to this contract must be clearly indicated by return of the contract with the Proposal, with exceptions clearly noted. The

LIBRARY has the right to require the selected Proposer to sign the attached contract or to negotiate revisions to the contract language prior to execution of the contract, at its discretion.

### **PROJECT OVERVIEW:**

The LIBRARY desires to have the roof replaced at its Eatonville Branch Library, located at 200 East Kennedy Blvd. Eatonville, FL 32751.

The RC will remove and replace the approximately 9,000 sqft shingle roof in accordance with attached drawings and Project Manual. RC is to be mindful of keeping a safe and clean worksite and ensuring a safe access to the facility for LIBRARY patrons and staff. The LIBRARY intends to be fully operational while this project is underway.

The design team consists of:

#### **Architect of Record:**

A/R/C ASSOCIATES, INCORPORATED  
601 N. Fern Creek Avenue, Suite 100  
Orlando, Florida 32803  
Tel 407-896-7875 Fax 407-898-6043

### **SCOPE OF SERVICES** (See Project Manual and Drawings for More Specifics):

The LIBRARY is seeking the services of a qualified RC to perform the following services in regards to the removal and replacement of the Eatonville Branch Library roofing system. This project includes, but is not limited to, the removal of the existing shingle roof to the deck; replace any damaged and deteriorated wood in the deck; install a self-adhered modified bitumen underlayment; install new counterflashings; and install new architectural shingles.

1. Perform RC duties to ensure the removal and replacement of the Eatonville Branch Library roofing system as noted in the Project Manual and on the attached drawings. Including obtaining all required permits, arranging all inspections and final Certificate of Occupancy/Completion.
2. Ensure compliance with ALL Federal, State and Local codes and regulations (ie: building, roofing, fire, electrical, plumbing, life/safety, etc.).
3. Ensure a safe and clean work area by keeping work area free from debris throughout the day and at the end of the day (especially food and drink waste). RC is to provide and maintain barricades, temporary lighting and other safety devices required by applicable regulatory agencies.
4. Review each site to verify existing conditions with LIBRARY's Project Coordinator prior to starting the construction phase.
5. Maintain a qualified full-time non-working supervisor on the job site while work is in progress. The Supervisor shall monitor quality control over suppliers, manufacturers, products, services, site conditions, and workmanship, to produce Work of specified quality.

6. Coordination ( See Project Manual and Drawings For More Specifics ):

- a. The RC, subcontractors, vendors, manufacturers, etc. are responsible for the review of Project Manual and ALL contract drawings to assure all work is properly coordinated between all parties.
- b. The RC shall schedule, coordinate, construct and review all work in a timely manner to avoid delays.
- c. The RC will provide, at a minimum, weekly updates on status of each project to the LIBRARY's Project Coordinator.
- d. The RV will submit a "Construction Safety Plan" depicting how they will keep exit ways protected and in a safe condition while the LIBRARY is occupied.
- e. RC will schedule roof loading and overhead crane operations shall be scheduled as much as practicable during times the facilities are unoccupied or during low traffic hours.
- f. RC shall consult with local governing authorities having jurisdiction regarding noise abatement requirements and construction operations, if applicable.
- g. A copy of all required city, county and state licenses that are applicable to this project shall be supplied to the Owner's representative prior to the appropriate work commencing.
- h. RC, RC's personnel and RC's subcontractor personnel shall observe the rules of conduct prescribed by owner in the Project Manual in regards to work on this project.
- i. RC will attend and take minutes of Pre-Construction Meeting, Site Mobilization Meeting, Progress Meetings, etc.

7. Removal ( See Project Manual and Drawings For More Specifics ):

- a. The roof system is to be removed down to the existing wood roof deck, existing edge metals and gutters are to remain in place.
- b. Replace damaged and deteriorated wood deck per unit cost allowances.
- c. Prepare and maintain worksite and schedule to allow the facility to be open and accessible by LIBRARY staff and patrons.
- d. Remove unsuitable material not marked for salvage, including rotted wood, corroded metals, and deteriorated masonry and concrete.
- e. Replace materials as specified for finished Work.
- f. Remove debris and abandoned items from area and from concealed spaces.

- g. Provide, erect, and maintain temporary barriers and security devices.
  - h. Protect existing landscaping materials, appurtenances, structures and adjacent roofs which are not to be removed.
  - i. Conduct removal to minimize interference with adjacent structures and occupants.
  - j. Any materials damaged by the removal process that are out of the scope of work, as specified by the contract documents, must be replaced at no additional cost to the owner.
  - k. Cease operations immediately if adjacent structures appear to be in danger. Notify Architect. Do not resume operations until directed.
  - l. Conduct operations with minimum interference to public or private accesses. Maintain egress and access at all times.
  - m. Remove demolished materials from site. Do not burn or bury materials on site. Leave site in clean condition.
8. Replacement ( See Project Manual and Drawings For More Specifics ):
- a. Execute work by methods to avoid damage to other Work, and to provide proper surfaces to receive patching and finishing.
  - b. Secure products in place with positive anchorage devices designed and sized to withstand stresses, vibration, physical distortion, or disfigurement.
  - c. Clean substrate surfaces prior to applying next material or substance.
  - d. Seal cracks or openings of substrate prior to applying next material or substance.
  - e. Use specified materials and fasteners in Project Manual.
  - f. Discard material with defects which might impair quality of work and units which are too small to fabricate work with minimum joints or optimum joint arrangement.
  - g. Set carpentry work accurately to required levels and lines, with members plumb and true and accurately cut and fitted.
  - h. Securely attach carpentry work to substrate by anchoring and fastening as shown or as required by recognized standards. Countersink fastener heads on exposed carpentry work.
  - i. Use fasteners and anchorages as indicated. Make tight connections between members. Install fasteners without splitting of wood; pre-drill as required. Holes drilled oversized or wallered out, shall be re-drilled.

- j. Place horizontal members, crown side up.
- k. Construct curb members of solid wood sections.
- l. Do not install wood nailers or sheathing more than one day in advance from installation of roofing. Install dry-in felt over any wood nailers and sheathing.
- m. Install Roof Underlayment Sheet Material
  - i. Material: Rubberized (SBS) asphalt bonded to a polyester reinforcing mat, 40 mil (1 mm) minimum total thickness, single-sided, self-adhesive, with a strippable treated release paper. Surface to be non-skid surface of mineral granules, fabric scrim and/or sanded, OR
  - ii. Material:, Fiberglass reinforced rubberized (SBS) asphalt bonded to a reinforcing polymeric film (top surface), 75 mil minimum total thickness, single sided self-adhesive, with a strippable treated release paper. Surface to be non-skid surface of mineral granules, fabric scrim and/or sanded.
- n. Form flashing to protect roofing materials from physical damage and shed water.
- o. Form sections square and accurate to profile, in maximum possible lengths, free from distortion or defects detrimental to appearance or performance.
- p. Install Architectural Shingles
  - i. First Course: Start the first "course" (or "row") with a full shingle. Align it to the 36" chalk line with the butt edge flush with the starter course edge.
  - ii. Second Course: Cut 6" off the outside edge of the next course and align it to the 30" chalk line.
  - iii. Third Course: Cut 12" off the outside edge of the next course and align it to the 24" chalk line.
  - iv. Succeeding Courses: Repeat this pattern on up the roof cutting 6" off each succeeding row. When the last piece is installed, which is 6" wide, return to eaves and apply full shingle in each row up the roof.
  - v. A cut-out must never come over a cut-out in the row immediately below.
  - vi. Alternate offsets of 4" and 5" are also acceptable.
  - vii. For best distribution of color blend, each row shall be run at least four shingles across the roof before proceeding to the next row.
- q. Install Hips and Ridges:
  - i. Hip and Ridge Shingles can be cut from the manufacturer's standard three tab shingles matching those used to cover roof. Cut 3 ridge shingles per 3 tab shingles. Bend each shingle equally over the ridge.

- ii. If weather is cold, warm shingles until flexible to prevent cracking.
- iii. Apply a continuous 11 inch wide strip of modified bitumen, mineral granule surfaced cap sheet the entire length of the hip or ridge immediately prior to installation of the ridge shingles.
- iv. Start on end of ridge opposite prevailing wind. Expose shingles 5", using two nails each, 5 1/2" from the exposed butt end and 1" from the side edges.
- v. Start hips at bottom. Apply ridge after hips are installed. Finish with last ridge cap piece set in plastic cement. Do not leave any nails exposed

### **PERMITS AND FEES:**

In compliance with the Public Bid Disclosure Act, Section 218.80, Florida Statutes, each permit, license, and/or fee applicable to this work/project (before and during construction) that will either be paid by the RC or by the LIBRARY as specified below:

- LIBRARY will reimburse RC for any and all permits, licenses, and fees imposed on the work/project by the State of Florida, or by other local government entities of agencies. This does not alleviate the RC from obtaining the permits.
- Licenses, permits and fees which may be required by the State of Florida, State Agencies or by other local governmental entities or agencies are the responsibility of the RC. The cost of all permits, fees, etc. shall be included in the bid price except where noted otherwise in the specifications or other bid documents.
- The RC shall procure and pay for all permits and licenses, charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the work.

### **TIME AND QUALIFICATIONS:**

Upon successful contract approvals and negotiation, the time of performance for the roofing contractor services shall be 90 days from the date of notice to proceed. A lump sum contract for roofing contractor services and contractual completion date shall be negotiated after the successful RC is selected.

### **INSTRUCTIONS TO PROPOSERS:**

Proposers desiring to provide services, as described herein, shall submit responses in one sealed package and clearly labeled **"ROOFING CONTRACTOR SERVICES FOR OCLS Eatonville Branch Library RFP OCLS-19-003"**.

- Said package shall have the proposers company name and address listed on the outside of the package.
- Said package shall contain: one (1) original Proposal (clearly marked), three (3) copies (a total of 4 printed Proposals).

- **Proposals shall be submitted no later than 3:00 P.M. local time, on June 13, 2019 to:**

Orange County Library System  
Attn: Tami L. Berry, Facilities and Operations Department Head  
5<sup>th</sup> Floor Human Resources Reception Desk  
101 East Central Blvd., Orlando, Florida 32801

- If your response contains any information deemed confidential, in accordance with Chapter 119 of the Florida Statutes, provide a USB drive with a redacted version of your response labeled REDACTED. Electronic copy shall be in Microsoft Word or Adobe – the most recent software version.
- **Respondents are cautioned that they are responsible for delivery to the specific location cited above. Therefore, if your Proposal is delivered by an express mail carrier or by any other means, it is your responsibility to ensure delivery to the above address and floor/office location. The LIBRARY will not be responsible for deliveries made to any place other than the specified address noted above.**
- The time and date for receipt of Proposals will be strictly observed. The LIBRARY shall not be responsible for late deliveries or mail delays. The date stamp and clock in the LIBRARY's 5<sup>th</sup> Floor Human Resources Reception Desk shall serve as the official authority to determine timeliness of the Proposal. Proposers accept all risks of late delivery of mailed and hand delivered responses regardless of fault.
- Proposals received after the specified time and date shall be considered non-responsive and will be returned unopened. The decision to refuse to consider a proposal that was received beyond the date/time established in the solicitation shall not be the basis for a protest. All Proposals timely received will be opened publicly, and the names of all Proposers shall be read aloud.
- Faxed or E-Mailed Proposals shall be rejected as non-responsive, regardless of where and when the fax or e-mail is received.
- All responses must be signed by an officer or employee having authority to legally bind the Proposer.
- All information submitted will become part of the project file and, unless otherwise exempt or confidential in accordance with Florida law, will become a public record. All responses and accompanying documentation will become the property of the LIBRARY and will not be returned.
- Any response may be withdrawn prior to the date and time the responses are due. Any response not withdrawn prior to the date and time responses are due, will constitute an irrevocable offer, for a period of ninety (90) days, to provide the LIBRARY with the services as specific in the response.

## **PRELIMINARY SCHEDULE:**

These dates are estimates only and are subject to change by the LIBRARY.

<b>Event</b>	<b>Date</b>	<b>Time</b>
Announcement of RFP	<b>5/06/2019</b>	<b>10:00 A.M.</b>
Pre-Proposal Conference & Site Visit ( non-mandatory )	<b>5/16/2019</b>	<b>9:00 A.M.</b>
Question Submission Deadline	<b>5/23/2019</b>	<b>3:00 P.M.</b>
Question Responses Posted	<b>5/24/2019</b>	<b>3:00 P.M.</b>
RFP Response Package Due	<b>6/13/2019</b>	<b>3:00 P.M.</b>
RFP Evaluated	<b>6/20/2019</b>	<b>TBD</b>
Inform Proposers of Award	<b>6/22/2019</b>	<b>3:00 P.M.</b>
Contract Negotiations	<b>6/23-30/2019</b>	<b>TBD</b>
Tentative Date to Award Contract	<b>7/1/2019</b>	<b>TBD</b>

### **A Pre-Proposal Conference and Site Visit will be conducted on May 16, 2019 at 9:00 am.**

The meeting location is LIBRARY Eatonville Branch which is located at 200 East Kennedy Blvd. Eatonville, FL 32751. All interested parties are requested to send a minimum of 1 and a maximum of 3 representatives to this non-mandatory meeting. Note: this is the only opportunity to visit the site.

## **TERMS AND CONDITIONS:**

- Insurance Requirements: The LIBRARY shall be named as additional insured on all policies. The RC shall maintain minimum general liability insurance in the amount of \$1,000,000 per occurrence, \$2,000,000 general aggregate and \$2,000,000 aggregate for products completed operating hazard. RC shall also maintain umbrella coverage of \$3,000,000 each occurrence/combined. **Builder's Risk Insurance shall be provided by the LIBRARY.** RC shall maintain automotive liability insurance in the amount of \$1,000,000 for company owned and for hire vehicles. Insurance carriers providing coverage required must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VIII or better. Additionally, Proposer is required to maintain any coverage required by federal and state workers' compensation or financial responsibility laws including but not limited to Chapter 324 and 440, Florida Statutes, as may be amended from time to time.
- Bonds. RC shall furnish unconditional performance and payment bonds in an amount equal to 100% of the Contract Sum. The bonds shall comply with the requirements of Florida Statutes Section 255.05; however, "Conditional" Payment Bonds shall not be acceptable.
- The LIBRARY reserves the right to accept or reject any or all Proposals that it may in its sole discretion deem nonresponsive, to waive technicalities, or to accept the Proposal which, in its sole judgment, is most advantageous and best serves the over-all interests of the LIBRARY.
- The LIBRARY reserves the right to request clarification of information submitted and to request additional information of one or more Proposers after the deadline for receipt of Proposals.



- Any Proposal may be withdrawn until the date and time set above for the submission of the Proposals.
- By submission of a Proposal, the Proposer agrees that all costs associated with the preparation of his/her Proposal will be the sole responsibility of the Proposer. The Proposer also agrees that the LIBRARY bears no responsibility for any costs associated with the preparation of the Proposal and/or any administrative or judicial proceedings resulting from the solicitation process.
- Proposers must not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.
- The Proposer understands that this RFP does not constitute an agreement or contract between the LIBRARY and the Proposer.
- Any Proposer who submits in its Proposal to the LIBRARY any information that is determined by the LIBRARY, in its sole opinion, to be substantially inaccurate, misleading, exaggerated, or incorrect may be disqualified from consideration
- Failure of any Proposer to comply with the INSTRUCTIONS TO PROPOSERS and TERMS AND CONDITIONS of this Request for Proposals, unless specifically identified as a mandatory requirement by the word "shall", may render the Proposal non-responsive and ineligible from further consideration.
- The Proposer warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Proposer, to solicit or secure this Contract and that they have not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Proposer any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Contract. For the breach or violation of this provision, the LIBRARY shall have the right to terminate the Agreement at its sole discretion, without liability and to deduct from the Contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

#### **SUBSTITUTE MATERIAL AND EQUIPMENT:**

The Contract, if awarded, will be on the basis of material and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever materials or equipment or patented processes are specified or described in the Contract Documents by naming a trade name, manufacturer, supplier or proprietary item or catalog number, the naming of the item is intended to establish the type, function and quality required and to establish a basis for bidding.

Substitute materials or equipment may be considered after a Contract for the Work is executed if sufficient information is supplied by RC to allow the LIBRARY's Project Coordinator to evaluate the proposed substitution, unless the naming of the item is followed by words indicating that no substitution is permitted. The procedure for submittal of any such application by RC and consideration by Project Coordinator is set forth in the General Conditions.

In the event that substitute materials or equipment are used and are less costly than the originally specified material or equipment, then the difference in cost of the item shall benefit the LIBRARY and RC in equal proportions.

Applications for substitute materials and equipment shall only be evaluated after the Contract is executed. The Contract Sum and any alternates shall reflect the costs for the materials and equipment named or specified only.

### **LICENSING REQUIREMENTS:**

The following licensing requirements shall apply when the applicable Florida statute mandates specific licensing for Contractors engaged in the type of work covered by this solicitation.

- State of Florida, Department of Professional Regulation, Construction Industries Licensing Board and licensed by other federal, state, regional, county or municipal agencies having jurisdiction over the specified construction work.
- Said licenses shall be in the Proposer's name as it appears on the Official Bid Form. Proposer shall supply appropriate license numbers, with expiration dates, as part of their response. Failure to hold and provide proof of proper licensing, certification and registration shall be grounds for rejection of the Proposal.
- Proposer shall provide copies of all applicable licenses with their RFP response.
- Subcontractors contracted by the RC shall be licensed in their respective fields to obtain construction permits from authorities having jurisdiction. Said license must be in the name of the subcontractor listed on Proposed Subcontractor Listing provided with the RFP response.

### **SHORTLISTS, AND PROTESTS:**

The recommended short list of Proposers will be available upon request by interested parties by contacting the RFP Project Coordinator noted above for five full business days after the results are posted. Failure to file a protest to the LIBRARY's Chief Financial Officer by 5:00 PM on the fifth full business day after the results are posted shall constitute a waiver of protest proceedings.

### **KEY PERSONNEL:**

The Project Manager must be employed by the RC.

### **REFERENCE CHECKS:**

The contact person listed as a reference shall be someone who has personal knowledge of the Proposer's performance during the referenced project. Contact persons must have been informed that they are being used as a reference and that the LIBRARY may be calling or emailing them. More than one person can be listed but all must have knowledge of the project.

DO NOT list principals or officers who will not be able to answer specific questions regarding the project. Failure of references listed to respond to the LIBRARY's inquiries may negatively impact the rating of the Proposal. The reference shall be the owner or a representative of the

owner. An owner's representative is defined as a firm or individual hired by the owner to oversee the design or construction oversight services performed by the contractor. Consultants who provided services under the referenced project shall not be accepted as references unless they were hired as the owner's representative for the referenced project.

**VERIFICATION OF EMPLOYMENT STATUS:**

Prior to the employment of any person under this contract, the RC shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the RC during the contract term, and an express requirement that RC include in such subcontracts the requirement that subcontractors performing work or providing services pursuant to this contract utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. For more information on this process, please refer to United States Citizenship and Immigration Service site at: <http://www.uscis.gov/portal/site/uscis>.

**Only those employees determined eligible to work within the United States shall be employed under this contract.**

By submission of a bid in response to this solicitation, the RC affirms that all employees in the above categories shall undergo e-verification before placement on any resulting contract from this RFP process. The RC shall commit to comply with this requirement by completing and submitting the E-Verification certification, attached to this solicitation with their proposal submission.

**TOBACCO FREE CAMPUS:**

All LIBRARY facilities and operations shall be tobacco free. This policy shall apply to parking lots, parks, break areas and worksites. It is also applicable to RC and their personnel and subcontractor personnel during contract performance on LIBRARY owned or leased property. Tobacco is defined as tobacco products including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco and snuff. Failure to abide by this policy may result in civil penalties levied under Chapter 386, Florida Statutes and/or contract enforcement remedies.

**DRUG FREE WORKPLACE:**

By submission of a proposal in response to this solicitation, the Proposer acknowledges the LIBRARY's Drug Free Workplace requirement applies to the RC and their subcontractors. The RC shall complete and submit the Drug Free Workplace Form attached to this solicitation with their proposal submission. Subcontractors will be required to submit same prior to contract is issued.

**ASBESTOS FREE MATERIALS:**

By submission of a proposal in response to this solicitation, the Proposer acknowledges that if a contract is issued between the LIBRARY and the RC, the RC shall provide a written and notarized statement on company letterhead to certify and warrant that the project was designed and built with asbestos free materials. Such statement shall be submitted with the final payment request. Final payment shall not be made until such statement is submitted. Proposer agrees that if materials containing asbestos are subsequently discovered at any future time to have been included in the design or renovation, RC shall be liable for all costs related to the redesign

or modification of the construction of the project so that materials containing asbestos are removed from the design, plans or specifications or construction contract documents, and, in addition, if construction has begun or has been completed pursuant to a design or installation by RC that includes asbestos containing materials, the RC shall also be liable for all costs related to the abatement of such asbestos.

**DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION:**

By submission of a proposal in response to this solicitation, the Proposer affirms that it is in compliance with the requirements of 2 C.F.R. Part 180 and that neither it, its principals, nor its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

**PUBLIC RECORDS COMPLIANCE (APPLICABLE FOR SERVICE CONTRACTS):**

By submission of a proposal in response to this solicitation, the Proposer acknowledges that the LIBRARY is a public agency subject to Chapter 119, Florida Statutes. The Proposer acknowledges that if a contract is issued between the LIBRARY and the RC the RC agrees to and will require any subcontractor to comply with Florida's Public Records Law. Specifically, the RC and any sub-contractor shall:

- A. Keep and maintain public records required by LIBRARY to perform the service.
- B. Upon request from LIBRARY's Custodian of Public Records, provide LIBRARY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from the public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the RC does not transfer the records to LIBRARY.
- D. Upon completion of the contract, RC agrees to transfer at no cost to LIBRARY all public records in possession of the RC or keep and maintain public records required by LIBRARY to perform the service. If the RC transfers all public record to LIBRARY upon completion of the contract, the RC shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the RC keeps and maintains public records upon completion of the contract, the RC shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to LIBRARY, upon request from LIBRARY's Custodian of Public Records, in a format that is compatible with the information technology systems of LIBRARY.
- E. A RC who fails to provide the public records to LIBRARY within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.

**F. IF THE PROPOSER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS REQUEST FOR PROPOSALS, CONTACT LOVEVIA WILLIAMS THE LIBRARY'S CUSTODIAN OF PUBLIC RECORDS AT:**

**101 East Central Blvd, 5th Floor, Orlando, FL 32801  
Phone: 407-835-7628 Fax: 407-835-7649  
E-Mail: PublicRecordsRequest@OCLS.INFO**

**SUBMITTAL INSTRUCTIONS:**

The response to this RFP must be submitted on 8-1/2" X 11" paper, 12-point font, pages numbered, with headings, sections, and sub-sections that directly correlate/address specifically ALL required submittal information in their respective order identified below. Interested RCs must submit five (5) hard copies and one (1) electronic copy on a USB device. Electronic copy shall be in Microsoft Word or Adobe – the most recent software version

**A. Profile and Qualifications:** Experience and qualifications of the RC and proposed project specific staff.

**1. Organization Description:** Give a brief history of the organizational structure of the RC, including the organization's date of inception, number of employees (both full time and part-time) and RC's web address. If the RC has a minority, women, and/or service-disabled veteran business status with Orange County Board of County Commissioners and/or the City of Orlando, provide a copy of said certification.

**2. Previous Experience:** In order to submit a response to this RFP, RCs must be experienced in providing roofing contractor services in the State of Florida for at least five (5) years, with at least three (3) projects performed while the facility was open to the public and at least three (3) projects with a total construction cost in excess of \$100,000. Provide current/past performance within the last five (5) years of the RC in successfully completing projects of similar size scope and complexity or larger. Past experience in removing and installing architectural shingles in a commercial facility will be of particular interest. Indicate the specific services provided by the RC; this should include all "in-house" services provided by direct employees of the proposing RC.

**3. Qualifications of Subcontractors:** Describe background/qualifications of subcontractors (if any), subcontractor assignments, and percentage of subcontractor involvement. If available, provide web addresses for the subcontractors. If the subcontractor has a minority, women, and/or service-disabled veteran business status with Orange County Board of County Commissioners and/or the City of Orlando, provide a copy of said certification

**4. References:** Provide at least three (3) references, including contact names, e-mail addresses and phone numbers, for projects of similar scope and complexity completed in the last five (5) years. The LIBRARY intends to contact client references listed by the RC in its response.

**5. Key Personnel:** Provide biographies/resumes of the proposed Project Manager and all other key lead roofing members of the staff/team that will be assigned to this effort. The biographies shall include their position, years of experience, tenure with the RC and

similar successful projects relating to LIBRARY's requirements. Include an organization chart clearly identifying key personnel, their functional role, the firm they are employed by, and their primary work location. **Read Project Manual for various levels of experience required.**

**6. Conflict of Interest:** Indicate any potential conflicts of interest with the LIBRARY, including the LIBRARY's Board of Trustees.

**7. Legal:** Provide list of all lawsuits by and against the RC and subcontractors over the past five (5) years.

**B. Scope of Services:** Each response must address, at a minimum, a description of the RC's approach to the removal, replacement and coordination tasks noted in the Scope of Services as stipulated above, a milestone schedule for all phases of the project, any additional supporting documentation to show understanding of the intent of the design and scope of services, and any comments or recommendations regarding the contents of the scope of services. **Also include a list of all permits required for the project and the estimated cost and processing time for each permit.** RC needs to specifically address how they intend to coordinate their tasks so that the LIBRARY can still be in full operation while the project is underway.

**C. Additional Information:** The Proposer may choose to provide any additional relevant information in this section. If there is no additional information to present, state in this section, "There is no additional information that we wish to present".

**D. Bid Sheet:** The proposer shall include the attached bid sheet with their proposal, indicating the lump sum price for the base service ( which includes all labor, materials, insurance, permits, etc. ) as noted in the Project Manual. Included in the lump sum base price is 100 linear feet of 2x4 pressure treated wood nailers, 256 square feet of plywood sheathing and 2,000 square feet of spare architectural shingles as noted in the Project Manual. Additional nailers and/or plywood sheathing will be at an additional cost.

**E. Required Forms:**

1. Proposal Cover Page
2. Acknowledgement of Addenda Page
3. Authorized Signatories/Negotiators Page
4. Drug Free Workplace Acknowledgement Form
5. Conflict of Interest and Litigation Statement Form
6. E-Verification Certification Form
7. Relationship Disclosure Form
8. Vendor Certification Regarding Scrutinized Companies Lists Form

**[ End of Submittal Requirements ]**

**SELECTION of RC:**

RC responses shall be evaluated by the LIBRARY. The LIBRARY desires to select most responsive and responsible proposer with the lowest cost.

### **COMPLIANCE WITH LAWS:**

RC shall comply with all laws, rules, codes, ordinances, licensing and bonding requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, contractor shall comply with the Florida Sunshine Law and Public Records Act, Immigration and Nationality Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for immediate contract termination.

By submitting this Proposal, the RC certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725 of the Florida Statutes, (2) engaged in a boycott of Israel, (3) listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473 of the Florida Statutes, or (4) engaged in business operations in Cuba or Syria. Pursuant to section 287.135(5) of the Florida Statutes.

### **CONVICTED VENDORS:**

A person or affiliate placed on the convicted Vendor list pursuant to Section 287.133 of the *Florida Statutes* following a conviction for a public entity crime is prohibited from submitting a bid, response, or entering into a contract to provide any goods or services to the LIBRARY for a period of thirty-six months from the date of being placed on the convicted Vendor list.

### **DISCRIMINATORY VENDOR:**

An entity or affiliate placed on the discriminatory Vendor list pursuant to Section 287.134 of the *Florida Statutes* is prohibited from submitting a bid, response, or entering into a contract to provide any goods or services to the LIBRARY for a period of thirty-six months from the date of being placed on the discriminatory Vendor list.

### **RC's REPRESENTATION AND AUTHORIZATION:**

In submitting a response, each RC understands, represents, and acknowledges the following (if the RC cannot so certify to any of following, the RC shall submit with its response a written explanation).

- RC warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for RC to solicit or secure a contract with the LIBRARY and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for RC any fee, commission, percentage, gift, or other consideration contingent on or resulting from securing a contract with the LIBRARY.
- The RC is not currently under suspension or debarment by the State of Florida or any other governmental authority.
- To the best of the knowledge of the person signing the response, the RC, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or

found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

- To the best of the knowledge of the person signing the response, the RC has no delinquent obligations to the State of Florida, including a claim by the State of Florida for liquidated damages under any other contract.
- The response is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
- The RC has fully informed the LIBRARY in writing of all convictions of the RC, its affiliates (as defined in subsection 287.133(l) (a) of the *Florida Statutes*), and all directors, officers, and employees of the RC and its affiliates for violation of Federal or State Antitrust laws with respect to a public contract for violation of any Federal or State law involving fraud, bribery, collusion, conspiracy or material misrepresentation. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
- Neither the RC nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of funds: Has within the preceding three (3) years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, State, or local government transaction or public contract; 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; or Has within the preceding three (3) years of this certification had one (1) or more Federal, State, or local government contracts terminated for cause or default.
- The RC shall indemnify, defend, and hold harmless the LIBRARY and its employees against any cost, damage, or expense, which may be incurred or be caused by any error in the RC's preparation of its response.

#### **TRADE SECRETS AND PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION:**

Trade secrets and proprietary confidential business information are not solicited, nor desired, as information to be submitted with responses. The *Florida Statutes* and the State Constitution will govern whether information in a response is confidential or exempt from the Public Records Act. If information is submitted in the response, which the RC deems to be a trade secret or proprietary confidential business information under the provisions of section 288.075 of the *Florida Statutes*, or any other *Florida Statutes*, the information shall be submitted with the response in a separate, clearly marked envelope referencing the specific statutory citation for such exemption. In no event will the LIBRARY be liable in any manner whatsoever to RC if RC submits information which RC believes is confidential or exempt from the Public Records Act and which the LIBRARY, in its sole discretion, deems not to be confidential or exempt.



**RC's COST TO DEVELOP RESPONSE:**

Costs for developing responses responsive to this RFP are entirely the obligations of the RC and shall not be chargeable in any manner to the LIBRARY.

**REJECTION OF RESPONSES:**

The LIBRARY reserves the right to reject any and all responses for any reason whatsoever and to waive technicalities.

**[ Rest of Page Left Blank Intentionally ]**

**PROPOSAL COVER PAGE  
OCLS-19-003**

Name of Business: \_\_\_\_\_

NOTE: BUSINESS NAME MUST MATCH LEGAL NAME ASSIGNED TO TIN NUMBER  
**CURRENT W9 MUST BE SUBMITTED WITH PROPOSAL.**

TIN#: \_\_\_\_\_

D-U-N-S® # \_\_\_\_\_

\_\_\_\_\_  
(Street No. or P.O. Box Number) (Street Name)

\_\_\_\_\_  
(City) (State) (Zip Code)

Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**EMERGENCY CONTACT**

Emergency Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Cell Phone Number: \_\_\_\_\_

Residence Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**ACKNOWLEDGEMENT OF ADDENDA  
OCLS-19-003**

The Proposer shall acknowledge receipt of any addenda issued to this solicitation by completing the blocks below or by completion of the applicable information on the addendum and returning it not later than the date and time for receipt of the proposal. Failure to acknowledge an addendum that has a material impact on this solicitation may negatively impact the responsiveness of your proposal. Material impacts include but are not limited to changes to specifications, scope of work/services, delivery time, performance period, quantities, bonds, letters of credit, insurance, or qualifications.

Addendum No. \_\_\_\_\_, Date \_\_\_\_\_      Addendum No. \_\_\_\_\_, Date \_\_\_\_\_

Addendum No. \_\_\_\_\_, Date \_\_\_\_\_      Addendum No. \_\_\_\_\_, Date \_\_\_\_\_

Addendum No. \_\_\_\_\_, Date \_\_\_\_\_      Addendum No. \_\_\_\_\_, Date \_\_\_\_\_

Addendum No. \_\_\_\_\_, Date \_\_\_\_\_      Addendum No. \_\_\_\_\_, Date \_\_\_\_\_

Addendum No. \_\_\_\_\_, Date \_\_\_\_\_      Addendum No. \_\_\_\_\_, Date \_\_\_\_\_

Addendum No. \_\_\_\_\_, Date \_\_\_\_\_      Addendum No. \_\_\_\_\_, Date \_\_\_\_\_

**Addenda acknowledged and accepted:**

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

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

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

**AUTHORIZED SIGNATORIES/NEGOTIATORS  
OCLS-19-003**

The Proposer represents that the following principals are authorized to sign proposals, negotiate and/or sign contracts and related documents to which the Proposer will be duly bound. Principal is defined as an employee, officer or other technical or professional in a position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

Name	Title	Telephone Number/Email

The Proposer shall complete and submit the following information with the proposal:

Type of Organization

<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership	<input type="checkbox"/> Non-Profit
<input type="checkbox"/> Joint Venture	<input type="checkbox"/> Corporation	

State of Incorporation: \_\_\_\_\_

Principal Place of Business (Florida Statute Chapter 607): \_\_\_\_\_  
City/County/State

THE PRINCIPAL PLACE OF BUSINESS SHALL BE THE ADDRESS OF THE PROPOSER'S PRINCIPAL OFFICE AS IDENTIFIED BY THE FLORIDA DIVISION OF CORPORATIONS.

Federal I.D. number is: \_\_\_\_\_

(Proposer's Signature)	(Title)
------------------------	---------

(Proposer's Printed Name)	(Date)
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\_\_\_\_\_  
(Name of Business )

**DRUG-FREE WORKPLACE FORM  
OCLS-19-003**

The undersigned Proposer, in accordance with Florida Statute 287.087 hereby certifies that

\_\_\_\_\_ does:  
(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in Paragraph 1.
4. In the statement specified in Paragraph 1, notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Florida Statute 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Paragraphs 1 thru 5.
7. Require any and all subcontractors and their workforce, who will perform work under Contract Number: OCLS-19-003 ROOFING CONTRACTOR SERVICES FOR OCLS Eatonville Branch Library within the state of Florida to acknowledge the Drug-Free Workplace requirement by signing and submitting same form at time of contract execution.

As the person authorized to sign this statement, I certify that this firm complies fully with above requirements.

\_\_\_\_\_  
(Proposer's Signature)

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

\_\_\_\_\_  
(Proposer's Printed Name)

**CONFLICT/NON-CONFLICT OF INTEREST STATEMENT  
OCLS-19-003**

**CHECK ONE:**

To the best of our knowledge, the undersigned proposer has no potential conflict of interest due to any other clients, contracts, or property interest for this project.

OR

The undersigned proposer, by attachment to this form, submits information which may be a potential conflict of interest due to other clients, contracts, or property interest for this project.

**LITIGATION STATEMENT**

**CHECK ONE:**

The undersigned proposer has had no litigation and/or judgments entered against it by any local, state or federal entity and has had no litigation and/or judgments entered against such entities during the past ten (10) years.

OR

The undersigned proposer, BY ATTACHMENT TO THIS FORM, submits a summary and disposition of individual cases of litigation and/or judgments entered by or against any local, state or federal entity, by any state or federal court, during the past ten (10) years.

Name of Business: \_\_\_\_\_

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

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

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

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

Failure to check the appropriate blocks above may result in disqualification of your bid. Likewise, failure to provide documentation of a possible conflict of interest, or a summary of past litigation and/or judgments, may result in disqualification of your bid.

**E VERIFICATION CERTIFICATION  
OCLS-19-003**

**Contract Number: OCLS-19-003**

I hereby certify that I will utilize the U.S. Department of Homeland Security's E-Verify system in accordance with the terms governing the use of the system to confirm the employment eligibility of the individuals classified below. In accordance with s. 837.06, Florida Statutes, I understand and acknowledge that whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duties shall be guilty of a misdemeanor in the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

All persons, including subcontractors and their workforce, who will perform work under Contract Number: OCLS-19-003 ROOFING CONTRACTOR SERVICES FOR OCLS Eatonville Branch Library within the state of Florida.

Name of Business: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

**RELATIONSHIP DISCLOSURE FORM  
FOR USE WITH PROCUREMENT ITEMS, EXCEPT THOSE WHERE THE OCLS  
IS THE PRINCIPAL OR PRIMARY PROPOSER  
OCLS-19-003**

For all procurement items that will come before the Orange County Library System (OCLS) Procurement Committee for final approval, this form shall be completed by the Proposer and shall be submitted as part of the response to this RFQ/RFP/IFB submitted by the Proposer.

In the event any information provided on this form should change, the Proposer must file an amended form on or before the date the item is considered by the appropriate board or body.

**Part I**

**INFORMATION ON PROPOSER:**

Legal Name of Proposer:

---

Business Address (Street/P.O. Box, City and Zip Code):

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Business Phone: (     ) \_\_\_\_\_ Fax: (     ) \_\_\_\_\_

**INFORMATION ON PROPOSER'S AUTHORIZED AGENT, IF APPLICABLE:**

(Agent Authorization Form also required to be attached)

Name of Proposer's Authorized Agent:

---

Business Address (Street/P.O. Box, City and Zip Code):

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Business Phone: (     ) \_\_\_\_\_ Fax: (     ) \_\_\_\_\_



**RELATIONSHIP DISCLOSURE FORM  
FOR USE WITH PROCUREMENT ITEMS, EXCEPT THOSE WHERE THE OCLS  
IS THE PRINCIPAL OR PRIMARY PROPOSER  
OCLS-19-003**

**Part II**

IS THE PROPOSER A RELATIVE OF THE OCLS DIRECTOR/CEO OR ANY MEMBER OF THE OCLS BOARD OF TRUSTEES?

\_\_\_ YES \_\_\_ NO

IS THE OCLS DIRECTOR/CEO OR ANY MEMBER OF THE OCLS BOARD OF TRUSTEES THE PROPOSER'S EMPLOYEE?

\_\_\_ YES \_\_\_ NO

IS THE PROPOSER OR ANY PERSON WITH A DIRECT BENEFICIAL INTEREST IN THE OUTCOME OF THIS MATTER A BUSINESS ASSOCIATE OF THE OCLS DIRECTOR/CEO OR ANY MEMBER OF THE OCLS BOARD OF TRUSTEES?

\_\_\_ YES \_\_\_ NO

If you responded "YES" to any of the above questions, please state with whom and explain the relationship.

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(Use additional sheets of paper if necessary)

**RELATIONSHIP DISCLOSURE FORM  
FOR USE WITH PROCUREMENT ITEMS, EXCEPT THOSE WHERE THE OCLS  
IS THE PRINCIPAL OR PRIMARY PROPOSER  
OCLS-19-003**

**Part III**

**ORIGINAL SIGNATURE AND NOTARIZATION REQUIRED**

I hereby certify that information provided in this relationship disclosure form is true and correct based on my knowledge and belief. If any of this information changes, I further acknowledge and agree to amend this relationship disclosure form prior to any meeting at which the above referenced project is scheduled to be heard. In accordance with s. 837.06, Florida Statutes, I understand and acknowledge that whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor in the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

\_\_\_\_\_ (Proposer's Signature) \_\_\_\_\_ (Date)

Printed Name and Title of Person completing this form:

\_\_\_\_\_

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

I certify that the foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_. He/she is personally known to me or has produced \_\_\_\_\_ as identification and did/did not take an oath.

Witness my hand and official seal in the county and state stated above on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

(Notary Seal)

\_\_\_\_\_  
Signature of Notary Public

Notary Public for the State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**VENDOR CERTIFICATION REGARDING  
SCRUTINIZED COMPANIES LISTS**

Proposer's Name of Business: \_\_\_\_\_

NOTE: BUSINESS NAME MUST MATCH LEGAL NAME ASSIGNED TO TIN NUMBER

FEIN/TIN#: \_\_\_\_\_

\_\_\_\_\_  
(Street No. or P.O. Box Number) (Street Name)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Zip Code)

Contact Person: \_\_\_\_\_

Contact Person Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Section 287.135, Florida Statutes, prohibits agencies from contracting with companies for goods or services of varying amounts that are engaged in a boycott of Israel, or engaged in business operations in Cuba or Syria, or is on any of the following Scrutinized Companies Lists:

- Scrutinized Companies with Activities in Sudan List, or
- Scrutinized Companies with Activities in the Iran Petroleum Sector List, or
- Scrutinized Companies that Boycott Israel List

As the person authorized to sign on behalf of Proposer, I hereby certify that I have reviewed Section 287.135, Florida Statutes, and the company identified as the "Proposer's Name of Business" above is not engaged in a boycott of Israel, or engaged in business operations in Cuba or Syria, or is on any of the above noted Scrutinized Companies Lists. I understand that pursuant to section 287.135, Florida Statutes. The submission of a false certification may subject the company to civil penalties, attorney's fees and/or costs.

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

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

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

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

**REQUEST FOR PROPOSALS #OCLS-19-003  
ROOFING CONTRACTOR SERVICES FOR  
OCLS Eatonville Branch Library  
Bid Sheet Page 1 of 2**

**Lot A: Base Price**

I.	Mobilization	\$ _____
II.	Demolition	\$ _____
III.	Preliminary Roof Material	\$ _____
IV.	Preliminary Roof Labor	\$ _____
V.	Insulation Material	\$ _____
VI.	Insulation Labor	\$ _____
VII.	Roofing Material	\$ _____
VIII.	Roofing Labor	\$ _____
IX.	Sheet Metal Material	\$ _____
X.	Sheet Metal Labor	\$ _____
XI.	Painting	\$ _____
XII.	Mechanical/Plumbing Labor and Material	\$ _____
XIII.	Electrical – Miscellaneous	\$ _____
XIV.	Electrical – Lightning Protection	\$ _____
XV.	Permits	\$ _____
XVI.	100 L.F. of 2x4 Pressure Treated Nailers	\$ _____
XVII.	256 Sqft of Plywood Sheathing	\$ _____
XVIII.	2,000 Sqft of Spare Architectural Shingles	\$ _____
	<b>Total for Lot A – Base Price</b>	<b>\$ _____</b>

**REQUEST FOR PROPOSALS #OCLS-19-003  
ROOFING CONTRACTOR SERVICES FOR  
OCLS Eatonville Branch Library  
Bid Sheet Page 2 of 2**

**Lot B: Additional Material**

- I. 2x4 Pressure Treated Nailers Price per Linear Foot    \$ \_\_\_\_\_
- II. Plywood Sheathing Price per Square Foot                    \$ \_\_\_\_\_

Name of Business: \_\_\_\_\_

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

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

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

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

 **AIA<sup>®</sup> Document A104<sup>™</sup> – 2017****Standard Abbreviated Form of Agreement Between Owner and Contractor**

**AGREEMENT** made as of the \_\_\_ day of \_\_\_\_\_ in the year 2019  
(In words, indicate day, month and year.)

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

**Orange County Library District**  
101 East Central Blvd  
Orlando, Florida 32801  
Attn: Kristopher Shoemaker  
407-325-4230 (c)  
407-835-7650 (fax)  
407-835-7314 (o)  
[shoemaker.kristopher@ocls.info](mailto:shoemaker.kristopher@ocls.info)

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

**TBD**  
Contractor's License No.: \_\_\_\_\_

for the following Project:  
(Name, location and detailed description)

**Eatonville Branch Library Roof Replacement**  
Eatonville Branch Library  
200 East Kennedy Blvd.  
Eatonville, FL 32751

The Architect:  
(Name, legal status, address and other information)

**A/R/C ASSOCIATES, INCORPORATED**  
601 N. Fern Creek Avenue, Suite 100  
Orlando, Florida 32803  
Tel 407-896-7875  
Fax 407-898-6043

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

## TABLE OF ARTICLES

1	THE WORK OF THIS CONTRACT
2	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
3	CONTRACT SUM
4	PAYMENT
5	DISPUTE RESOLUTION
6	ENUMERATION OF CONTRACT DOCUMENTS
7	GENERAL PROVISIONS
8	OWNER
9	CONTRACTOR
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12	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
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16	PROTECTION OF PERSONS AND PROPERTY
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21	CLAIMS AND DISPUTES

## EXHIBIT A DETERMINATION OF THE COST OF THE WORK

### ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute and pay for the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Eatonville Library will be in full normal operation during the Contractor's performance of the Work. Contractor will coordinate the Work so as not to impact the Eatonville Library's operations during normal business hours.

### ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

Init.

/

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.

Established as follows:  
*(Insert a date or a means to determine the date of commencement of the Work.)*

The Date of Commencement of the Work for the Project shall be the date that the Building Permit is issued for the Work,

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

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

**§ 2.3 Substantial Completion**

**§ 2.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

*(Check the appropriate box and complete the necessary information.)*

- Not later than Ninety ( 90 ) calendar days from the date of commencement of the Work.
- By the following date:

**§ 2.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

**§ 2.3.3** If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

**ARTICLE 3 CONTRACT SUM**

**§ 3.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

*(Check the appropriate box.)*

- Stipulated Sum, in accordance with Section 3.2 below
- Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below
- Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

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

**§ 3.2** The Stipulated Sum shall be \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_ .00), subject to additions and deductions as provided in the Contract Documents. See Exhibit "B" for Contract Sum breakdown. Contractor's clarifications to the scope of Work are attached as Exhibit "C". The Work shall be performed in accordance with the schedule attached as Exhibit "D".

For Change Orders or Construction Change Directive Work, the amount for overhead shall be \_\_\_\_% and for profit \_\_\_\_% added or deducted for a total of \_\_\_\_\_ percent (\_\_\_\_%) of the Cost of the Work that is added or deducted, respectively ("Contractor's Fee"). Such Contractor's Fee includes all profit, overhead, general



conditions costs, and insurance (but not additional bond costs, if applicable), except if a Change Order extends the Date of Substantial Completion, then Contractor's reasonable extended daily general conditions costs shall be added to the cost of the Change Order per §14.5. Likewise, subcontractors shall not add general conditions costs, except that if the change includes an increase in the Contract Time, then extended daily general conditions costs may be added in accordance with §14.5. However, fee shall not be reduced for deductive Change Orders arising as a result of the Sales Tax Savings Program of Article 22, except fee shall be reduced on the amount of the sales tax savings.

- For Change Order Work accomplished by the Contractor's own forces, overhead and profit shall be a maximum of \_\_\_% of the Cost of the Work.
- For Change Order Work accomplished by Subcontractors, Subcontractor's overhead and profit shall be a maximum of \_\_\_% of the Cost of the Work.

**§ 3.2.1** The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

Exhibit "B".

**§ 3.2.2** Unit prices, if any:  
*(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
Exhibit "B"		

**§ 3.2.3** Allowances, if any, included in the stipulated sum:  
*(Identify each allowance.)*

Item	Price
Exhibit "B".	

**§ 3.3 Cost of the Work Plus Contractor's Fee**

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

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

**§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price**

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

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

**§ 3.4.3 Guaranteed Maximum Price**

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

Init.

**§ 3.4.3.2** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

**§ 3.4.3.3** Unit Prices, if any:  
*(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

**§ 3.4.3.4** Allowances, if any, included in the Guaranteed Maximum Price:  
*(Identify each allowance.)*

Item	Price
------	-------

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

**§ 3.4.3.6** To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 3.4.3.7** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

**§ 3.5** Liquidated damages, if any:  
*(Insert terms and conditions for liquidated damages, if any.)*

**Liquidated Damages.** If the Contractor fails to substantially complete the Work before the agreed upon Date of Substantial Completion set forth in this Agreement (including any extension granted by the Owner in writing), then the Contractor agrees to pay the Owner, as liquidated damages, a sum equal to the (Contract Sum \* 10%)/365 per calendar day until Substantial Completion of the Work is actually achieved. Such amount is agreed upon as a reasonable measure of the damages that the Owner will sustain from the Contractor's failure to timely complete the Work. Owner and the Contractor recognize the delays, expense and difficulties involved in providing in an arbitration or judicial proceeding the actual loss suffered by the Owner if the Work is not completed on time and accordingly, instead of requiring such proofs, they agree upon the above-stated amount as liquidated damages for delay (but not as a penalty). The foregoing liquidated damages shall be in lieu of all other monetary remedies that the Owner shall have in the event of the Contractor's delay in completing the Project.)

## ARTICLE 4 PAYMENT

### § 4.1 Progress Payments

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

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 20th day of the next month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than twenty five ( 25 ) days after the Architect receives the Application for Payment.  
*(Federal, state or local laws may require payment within a certain period of time.)*

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:  
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)*

10% retainage shall be withheld. At 50% completion of the Project, retainage shall be reduced to 5% for each subsequent progress payment in accordance with Florida Statutes Section 218.735. Upon Substantial Completion of the entire Work all retainage shall be released except 150% of the value of punch list Work, incomplete Work, and defective Work shall be withheld.

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.  
*(Insert rate of interest agreed upon, if any.)*

Per Florida Statute Chapter 218.

### § 4.2 Final Payment

§ 4.2.1 Contractor shall submit its final pay request within 45 days of Final Completion of the Project. Final payment, constituting the entire unpaid balance of the Contract Sum, less 150% of the value of punch list Work, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price;
- .3 the Contractor has delivered to the Owner a Contractor's Final Affidavit pursuant to Florida Law and a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1;
- .4 Contractor has delivered to Owner a certification that the Work does not contain any asbestos; and
- .5 Contractor has delivered to Owner a certification from the Building Department that the building permit has been finalized and closed out

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, but in no event until all the conditions of § 4.2.1 have been met.

## ARTICLE 5 DISPUTE RESOLUTION

### § 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Arbitration pursuant to Section 21.6 of this Agreement

Litigation in a court of competent jurisdiction

Init.

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User Notes:

(1831817835)

[ ] Other (Specify)

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

**ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS**

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

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203–2013 incorporated into this Agreement.)*

Not Used.

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
none			

§ 6.1.4 The Specifications:

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

See Exhibit E

Section	Title	Date	Pages

§ 6.1.5 The Drawings:

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

See Exhibit E

Number	Title	Date

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
See Exhibit E		

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

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

- .1 Other Exhibits:  
*(Check all boxes that apply.)*

[ X ] Exhibit A, Determination of the Cost of the Work.

Init.

[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

[ ] The Sustainability Plan:

Title	Date	Pages
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[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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.2 Other documents, if any, listed below:  
(List here any additional documents that are intended to form part of the Contract Documents.)

Exhibit A – Determination of the Cost of the Work for Change Orders  
Exhibit B - Breakdown of the Contract Sum and Clarifications  
Exhibit C – Contractor’s Clarifications  
Exhibit D – Schedule  
Exhibit E - Drawings and Specifications

## ARTICLE 7 GENERAL PROVISIONS

### § 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

### § 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

### § 7.3 The Work

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

### § 7.4 Instruments of Service

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

## § 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 Drawings, specifications, Instruments of Service and other documents including those in electronic form, prepared by the Architect or Contractor and furnished for the Project are the property of Owner. The Owner shall retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

## § 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form

## § 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## § 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

## § 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

Electronic mail may be used by the parties using the email addresses in § 19.4 and § 19.5.

§ 7.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

## § 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information

required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

## **ARTICLE 8 OWNER**

### **§ 8.1 Information and Services Required of the Owner**

**§ 8.1.1** n/a.

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

**§ 8.1.3** The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

### **§ 8.2 Owner's Right to Stop the Work**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

### **§ 8.3 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

## **ARTICLE 9 CONTRACTOR**

### **§ 9.1 Review of Contract Documents and Field Conditions by Contractor**

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

**§ 9.1.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

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

## § 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

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

## § 9.3 Labor and Materials

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

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

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

## § 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. For a period of one (1) year after the date of Substantial Completion (and longer if extended warranties are provided in the Contract Documents for certain materials, equipment, and installations), the Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

## § 9.5 Taxes

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

## § 9.6 Permits, Fees, Notices, and Compliance with Laws

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

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

## § 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade



discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

#### **§ 9.8 Contractor's Construction Schedules**

**§ 9.8.1** The Contractor, promptly after being awarded the Contract, shall 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. The approved Schedule is attached as Exhibit "D".

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

#### **§ 9.9 Submittals**

**§ 9.9.1** The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

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

**§ 9.9.3** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

#### **§ 9.10 Use of Site**

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

#### **§ 9.11 Cutting and Patching**

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

#### **§ 9.12 Cleaning Up**

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

#### **§ 9.13 Access to Work**

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

### § 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### § 9.15 Indemnification

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

**§ 9.15.2** In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## ARTICLE 10 ARCHITECT

**§ 10.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. However, any approvals, certificates, or decisions of the Architect are subject to the approval of Owner. At Owner's discretion, the duties of the Architect described herein may be performed by the Owner or the Owner's representative.

**§ 10.2** 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.

**§ 10.3** The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 10.4** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

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

§ 10.7 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.

§ 10.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

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

#### **ARTICLE 11 SUBCONTRACTORS**

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

#### **ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

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

## ARTICLE 13 CHANGES IN THE WORK

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

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

§ 13.3 Subject to the Owner's written approval, 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. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

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

## ARTICLE 14 TIME

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

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

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

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by fire, acts of God, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control or responsibility, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine, subject to the provisions of Article 21; however, the Contract Sum shall not be increased, except for a per diem payment as described below. It is the express and bargained for intent of the parties that the risk of any monetary damages caused by any delays described in this Section or any other delays from any other cause are accepted and assumed entirely by Contractor, and in no event shall any claim relating thereto for an increase in the Contract Sum be made or recognized, except for the per diem payment as described below. Contractor's sole remedy for any delay, impact, disruption, or interruption caused by any of the reasons listed in this Section shall be an equitable extension of time to perform the Work for each day of such delay that impacts the critical path schedule of the Project that extends the Date of Substantial Completion, and a per diem payment not to exceed the Contractor's reasonable extended daily general conditions costs per day for each day of such delay that impacts the critical path schedule of the Project that extends the Date of Substantial Completion. Contractor shall not make any other claim

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nor seek any other damages of any kind against Owner or Architect for any delays, impacts, disruptions, or interruptions of any kind. If a Contractor caused delay runs concurrent with such delays, Contractor shall not be entitled to any extension of time or per diem payment for the concurrent period of delay. Delays caused by labor disputes, delivery delays, and dispute resolution proceedings are considered within the Contractor's control and shall not be grounds for a delay claim. This Section does preclude recovery of damages for delay by Contractor under any other provisions of the Contract Documents.

Extensions of time will be granted only if the item, task, or other phase of construction delayed is critical to the Work and so indicated in the Contractor's Schedule.

Extensions of time due to adverse weather conditions not reasonably anticipated will be granted only because of such inclement weather occurring on a normal working day and preventing the execution of the major or critical item of construction ordinarily performed at the time. Extensions of time for weather delays will be considered only if such inclement weather exceeds that normally recorded by the National Weather Bureau for the same month and location.

## **ARTICLE 15 PAYMENTS AND COMPLETION**

### **§ 15.1 Schedule of Values**

**§ 15.1.1** Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 15.1.2** The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

### **§ 15.2 Control Estimate**

**§ 15.2.1** Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

**§ 15.2.2** The Control Estimate shall include:

- .1** the documents enumerated in Article 6, including all Modifications thereto;
- .2** a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3** a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4** a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- .5** a list of any contingency amounts included in the Control Estimate for further development of design and construction.

**§ 15.2.3** When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

**§ 15.2.4** The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed

changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

**§ 15.2.5** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

### **§ 15.3 Applications for Payment**

**§ 15.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 15.3.2** With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

**§ 15.3.3** Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

**§ 15.3.4** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

### **§ 15.4 Certificates for Payment**

**§ 15.4.1** 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 of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3. The Architect's Certificate of Payment is subject to the approval of the Owner.

**§ 15.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. 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. 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 suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 15.4.3** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 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 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 15.4.4** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

### **§ 15.5 Progress Payments**

**§ 15.5.1** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. As a condition to each progress payment the Contractor shall have furnished Owner with a partial lien waiver and release signed by Contractor, conditioned upon payment for all Work performed that is included in the current Application for Payment in the form attached to the Contract or if not attached, in a form approved by Owner, and shall have furnished Owner with partial unconditional lien waivers and releases signed by all subcontractors, suppliers, persons or entities furnishing any labor or material, equipment, services, and materials for the Project and for all Work performed by same that is included in the respective prior Application for Payment. In addition, as a condition to each progress payment, in the event that any liens have been filed against the Project, the Contractor shall have either recorded a satisfaction of such lien or transferred the lien to a bond satisfactory to Owner.

**§ 15.5.2** Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

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

**§ 15.5.4** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### **§ 15.6 Substantial Completion**

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

**§ 15.6.2** 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.

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**§ 15.6.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

### **§ 15.7 Final Completion and Final Payment**

**§ 15.7.1** Upon receipt of the Contractor's 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 the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 15.7.2** Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

**§ 15.7.3** The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 15.7.4** Acceptance of final payment by the Contractor, a Subcontractor or 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 the final Application for Payment.

## **ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY**

### **§ 16.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

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

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part

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by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

## **§ 16.2 Hazardous Materials and Substances**

**§ 16.2.1** The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 16.2.2** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

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

## **ARTICLE 17 INSURANCE AND BONDS**

### **§ 17.1 Contractor's Insurance**

**§ 17.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

**§ 17.1.2** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million (\$1,000,000 ) each occurrence, Two Million (\$2,000,000 ) general aggregate, and Two Million (\$2,000,000 ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 9.15.

**§ 17.1.3** Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than One Million (\$1,000,000 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

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§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits.

§ 17.1.6 Employers' Liability with policy limits not less than One Million (\$1,000,000 ) each accident, One Million (\$1,000,000 ) each employee, and One Million (\$1,000,000 ) policy limit.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million (\$1,000,000 ) per claim and One Million (\$1,000,000 ) in the aggregate.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than One Million (\$1,000,000 ) per claim and One Million (\$1,000,000 ) in the aggregate.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than One Million (\$1,000,000 ) per claim and One Million (\$1,000,000 ) in the aggregate.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### § 17.1.14 Other Insurance Provided by the Contractor

*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

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**Coverage**

Excess Liability, Umbrella form

**Limits**

Three Million (\$3,000,000)

**§ 17.2 Owner's Insurance****§ 17.2.1 Owner's Liability Insurance**

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

**§ 17.2.2 Property Insurance**

**§ 17.2.2.1** The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees. If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles, unless such costs are caused by the acts, omissions, or negligence of Contractor and in such event Contractor shall pay such costs not covered because of the deductibles.

**§ 17.2.2.2** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

**§ 17.2.2.3** If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ 17.2.2.4** If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ 17.2.2.5** Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**§ 17.2.2.6** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

**§ 17.2.2.7 Waiver of Subrogation**

**§ 17.2.2.7.1** 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by and paid by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of

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such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 17.2.2.7.2** 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

**§ 17.2.2.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 17.2.3 Other Insurance Provided by the Owner**

*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

**Coverage**

**Limits**

**§ 17.3 Performance Bond and Payment Bond**

**§ 17.3.1** 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 the Contract Documents on the date of execution of the Contract. See Section 22.2 below for requirements.

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

**ARTICLE 18 CORRECTION OF WORK**

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

**§ 18.2** In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

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

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

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

## ARTICLE 19 MISCELLANEOUS PROVISIONS

### § 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 19.2 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

### § 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative:  
(Name, address, email address and other information)

Tami Berry  
352-429-9079 (c)  
407-835-7650 (fax)  
407-835-7635 (o)  
Berry.tami@ocls.info

§ 19.5 The Contractor's representative:  
(Name, address, email address and other information)

tbd.

Email address to be provided by Contractor Representative

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

## ARTICLE 20 TERMINATION OF THE CONTRACT

### § 20.1 Termination by the Contractor

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed. Contractor shall not be entitled to any payment, damages, fees, costs, or profits for Work not yet performed.

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## § 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

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

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

## § 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. As the Contractor's sole remedy hereunder, Owner shall pay the Contractor for the Work completed as of the effective date of the termination of this Agreement. Contractor shall not be entitled to any payment, damages, fees, costs, or profits for Work not yet performed.

§ 20.4 In the event of any termination, the Contractor shall upon Owner's request, assign any and all subcontracts and purchase orders to Owner. Contractor shall have clauses in all its subcontracts and purchase orders allowing such assignment to Owner. As a precondition to any payment due Contractor as a result of any termination of this Agreement, Contractor shall execute any and all documents necessary to assign all rights and benefits of such subcontracts and purchase orders to Owner.

## ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution. Venue for mediation shall be exclusively in the State Courts of the County where the Project is located.

### § 21.2 Notice of Claims

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Architect 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.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party.

### § 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3. Venue for any dispute shall be exclusively in the State Courts where the Project is located.

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

§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall in accordance with Florida Statutes.

### § 21.6 Continuing Contract Performance

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

### § 21.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract, except for Owner's right to liquidated damages. 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 losses of use, principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, lost bonding capacity, loss of future work, loss of productivity and for loss of profit except anticipated profit arising directly from the Work properly performed.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except for Owner's right to liquidated damages, as provided in this Agreement, for Contractor's delay,

## 22. Other Provisions.

22.1 Owner shall be entitled to make any decision or approval required by this Agreement to be made by the Architect. Any decision of Owner shall supersede any decision of the Architect. Any time Contractor shall be required to notify or report to Architect such notice or report shall be also be made to Owner.

22.2 Bonds. Contractor shall furnish unconditional performance and payment bonds in an amount equal to 100% of the Contract Sum covering faithful performance of the Agreement and payment of all obligations arising thereunder. The cost of the bonds is included in the Contract Sum. The bonds shall comply with the requirements of Florida Statutes Section 255.05; however, "Conditional" Payment Bonds shall **not** be acceptable. Proper Power of Attorney shall accompany said bonds. Said bonds shall be delivered to the Owner. Contractor shall record the bonds in the public records of the County where the Project is located. No Work shall commence on the Project until the Notice of Commencement and copies of the Payment Bonds are recorded and certified copies thereof are posted at the Project site.

22.3. There are no intended or unintended third party beneficiaries of this Agreement, and no parties other than the Owner and the Contractor shall have the right to enforce this Agreement.

22.4 Discrimination Prohibited. The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor

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shall take affirmative action to ensure that qualified applicants are employed if work is available, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Contractor agrees to post in places available to all employees and applicants for employment, notices setting forth the policies of nondiscrimination.

**22.5 Conflicts.** This Agreement shall have precedence in the event of any conflicts between this Agreement and any of the Drawings, Specifications, Contractor's Proposal or Quotation Form, attachments, or other documents incorporated by reference to this Agreement.

**22.6 Use of Contingency.** *(If no contingency in a line item, delete)* If the Contract Sum breakdown includes a line item for contingency, such amount shall be for the Contractor's use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order, with all unspent contingency sums accruing to the benefit of the Owner. Examples of acceptable use of contingency include: scope gaps, omitted items, trade contractors which fail to sign acceptable subcontracts, and unforeseen field conditions for which a change order is not authorized hereunder. Contingency funds shall not be used for expenses related to correcting defective work, legal expenses, or subcontractor defaults. At Final Completion, the Contract Sum shall be reduced by Change Order by the amount of the unspent contingency sum. Expenditure of contingency funds by the Contractor shall be done only with written approval of the Owner.

**22.7** Contractor agrees to remove from the Project any employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner's written rules and regulations regarding jobsite conduct.

**22.8** Contractor shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers, and proper shoes are required apparel. The display of vulgar words, signs, or figures is prohibited. Sandals and flip-flops are prohibited on the Project site.

**22.9** Construction personnel shall not use profanity, illegal drugs, or alcohol on the Project site.

**22.10** The use of radios, tape players, cd players, boom boxes, sound producing devices, and the like are prohibited on the Project site.

**22.11** Smoking and all tobacco products are prohibited on the Project site, and prohibited anywhere on Owner's property. Tobacco is defined as tobacco products including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco and snuff. Failure to abide by this policy may result in civil penalties levied under Chapter 386, Florida Statutes and/or contract enforcement remedies.

**22.12 Sales Tax Savings Program.** The Owner is a not-for-profit, tax exempt organization. The Contractor shall work with and assist the Owner to prevent payment of taxes not due.

Notwithstanding anything herein to the contrary, because Owner is exempt from sales tax and wishes to generate sales tax savings for the Project. Owner reserves the right to make direct purchases of various construction materials and equipment included in the Work. Before purchasing materials or equipment for the Project or a combination of like items that exceed \$5,000 in cost, Contractor shall identify in writing to Owner all materials and equipment or a combination of like items to be included in the Work that will generate sales tax savings if purchased direct by Owner. Contractor shall comply with the written procedures for Owner Purchased materials provided by Owner to Contractor and shall incorporate a similar provision to this provision in all of its subcontracts requiring the Subcontractors' compliance with said procedures. Owner shall execute direct purchase orders with vendors for such Owner Purchased materials. The purchase orders shall contain Owner's Consumer Certificate of Exemption number. Owner shall acquire title to all Owner Purchased materials at the time same are delivered to the Project site. Owner shall obtain insurance on the Owner Purchased Materials and Owner shall assume all risk of loss and theft for the Owner Purchased Materials upon their delivery to the Project site and until they are incorporated into the real property. Vendors shall invoice Owner directly for the Owner Purchased Materials. Owner shall pay vendors directly for the Owner Purchased Materials. Contractor represents and warrants that it will use its best efforts to cooperate with Owner in implementing this sales tax savings program in order maximize cost savings for the Project. Upon the execution of a purchase order, Owner and Contractor shall execute a Change Order decreasing the Contract Sum by the total cost,



including the saved sales tax for the materials or equipment purchased directly by Owner under said purchase order. With respect to all direct purchases by Owner, Contractor shall remain responsible for coordinating, installing, inspecting, storing, safekeeping, handling, warranting, installation, and quality control for all direct purchases. Notwithstanding anything herein to the contrary, Contractor expressly acknowledges and agrees that any materials or equipment directly purchased by Owner pursuant to this Paragraph shall be included within and covered to the same extent as all other warranties and performance guarantees provided by Contractor pursuant to the terms of the Contract Documents, including bonds. Owner assigns to Contractor any and all warranties and rights Owner may have from any manufacturer or supplier of any such direct purchases by Owner. The Parties understand that the above Owner direct purchase procedures are generally not available to purchase fabricated materials from a vendor that, in addition to fabricating them, also installs those same fabricated materials into the Project.

The Owner agrees to indemnify and hold harmless the Contractor, its Subcontractors, vendors and suppliers from and against the payment of or liability for any sales or use taxes arising out of or resulting from the Owner purchasing materials for the Project under the Owner's sales tax exempt status, and for which the Owner or the Contractor, Subcontractors, vendors or suppliers should become liable, but only upon the condition that Contractor has properly complied with the Owner's written sales tax program procedures.

**22.13** Contractor shall permit Owner to have reasonable access to Contractor's records, account books, bills, invoices, payrolls, daily logs, and other records related to the Project. Contractor shall preserve such records for five (5) years after Substantial Completion of the Project.

**22.14** The Contractor shall ascertain, coordinate, and minimize interruptions to Owner's library operations that exist on or near the Project sites. To avoid impacts to Owner's library operations, Contractor has anticipated the need to use non-standard work hours and has included same in the Contract Sum. No claims for extras or requests for Change Orders based upon premium or overtime work due to non-standard work hours as defined by this Section shall be submitted to Owner.

**22.15 Sovereign Immunity.** Owner is a political subdivision of the State of Florida and enjoys sovereign immunity. To the extent that this Agreement imposes any liability upon Owner to Contractor, if at all, Owner's obligation is subject to the limitations of liability as provided in Section 768.28, Florida Statutes, as amended, and does not act as a waiver of Owner's entitlement to sovereign immunity as a matter of statutory and common law.

**22.16** The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

**22.17** Prohibition against Contingent Fees. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

**22.18** Contractor shall be responsible for maintaining in good condition all cultivated grass plots, trees, shrubs, and landscaping on the Project site. If damaged, Contractor shall restore same to its original condition after completion of the Work.

**22.19** The provisions of Florida Statute Chapter 558 are waived by both parties and shall not be applicable to this Agreement.

**22.20** Public Entity Crime. Contractor affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes, and that at no time has Contractor been convicted of a Public Entity Crime. Contractor agrees that it shall not violate such law and further acknowledges and agrees that any conviction during the term of this Agreement may result in termination of this Contract by Owner.

**22.21** Scrutinized Companies List.

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a. By executing this Agreement, Contractor certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725 of the Florida Statutes, (2) engaged in a boycott of Israel, (3) listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473 of the Florida Statutes, or (4) engaged in business operations in Cuba or Syria. Pursuant to section 287.135(5) of the Florida Statutes, Owner may immediately terminate this Agreement for cause if the Contractor is found to have submitted a false certification as to the above or if the Contractor is placed on the Scrutinized Companies that Boycott Israel List, is engaged in a boycott of Israel, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, during the term of the Agreement. If Owner determines that the Contractor has submitted a false certification, Owner will provide written notice to the Contractor. Unless the Contractor demonstrates in writing, within 90 calendar days of receipt of the notice, that Owner's determination of false certification was made in error, Owner shall bring a civil action against the Contractor. If Owner's determination is upheld, a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed on the Contractor, and the Contractor will be ineligible to bid on any Agreement with a Florida agency or local governmental entity for three years after the date of Owner's determination of false certification by the Contractor.

b. If federal law ceases to authorize the states to adopt and enforce the contracting prohibition in this Section, this Section shall be null and void without further action of the parties.

#### 22.22 Public Records.

a. To the extent Contractor is acting on behalf of Owner as provided under Subsection 119.011(2) of the Florida Statutes, Contractor shall:

i. Keep and maintain public records required by Owner to perform the services under this Agreement.

ii. Upon request from Owner's custodian of public records, provide Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the costs provided in Chapter 119 of the Florida Statutes or otherwise provided by law.

iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to Owner.

iv. Upon completion of the Agreement, transfer, at no cost, to Owner all public records in possession of Contractor or keep and maintain public records required by Owner to perform the service. If the Contractor transfers all public records to Owner upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Owner, upon request from Owner's custodian of public records, in a format that is compatible with the information technology systems of Owner.

b. If the Contractor fails to provide the public records to Owner within a reasonable time the Contractor may be subject to penalties under Section 119.10 of the Florida Statutes. Further, Owner may exercise any remedies at law or in equity, including, without limitation, the right to (i) impose sanctions and assess financial consequences, (ii) withhold and/or reduce payment, and (iii) terminate this Agreement in accordance with the terms hereof.

Contractor shall defend, at its own cost, indemnify, and hold harmless Owner, their officers, directors, and employees from and against all claims, damages, losses, and expenses, (including but not limited to fees and charges of attorneys or other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from Contractor's failure to comply with the terms of this Section.

c. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT OWNER'S CUSTODIAN OF PUBLIC RECORDS FOR THIS PROJECT, LOVEVIA WILLIAMS AT 101 E. CENTRAL BLVD. 5<sup>th</sup> Floor., ORLANDO, FLORIDA 32801, 5th FLOOR, ORLANDO, FLORIDA, [williams.lovevia@ocls.info](mailto:williams.lovevia@ocls.info) 407-835-7628.**

22.23 Contractor shall not use any funds received pursuant to this Agreement for lobbying the Florida Legislature, the judicial branch, or any state agency.

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User Notes:

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22.24 Contractor represents that it is not on the State's discriminatory vendor list and that for services related to this Agreement, Contractor shall not transact business with any entity that has been placed on the State's discriminatory vendor list.

22.25 The obligations of Owner under this Agreement are subject to availability of funds lawfully appropriated for its purpose by the Owner's Board of Trustees, or other specified funding source for this Agreement.

22.26 E-Verify. Prior to the employment of any person performing services under this Agreement, the Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all employees within the State of Florida that are hired by the Contractor after the execution of the Agreement who are providing labor under the Agreement during the Agreement term; and, (b) all employees within the State of Florida of any of the Contractor's subcontractors that are hired by those subcontractors after the execution of the Agreement who are providing labor under this Agreement. Please refer to USCIS.gov for more information on this process.

**Only those employees determined eligible to work within the United States shall be employed under this Agreement.**

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** *(Signature)*

Kristopher S. Shoemaker, Chief Financial Officer

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**CONTRACTOR** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

# Exhibit A – Determination of the Cost of the Work For Change Order Work

## COST OF THE WORK

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean the actual costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify below, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

None.

§ 6.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel (including Contractor's Project Manager) engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Prior to commencing the Work, the Contractor shall submit to the Owner for approval, a list of supervisory and field office personnel, their duties on the Work and their respective pay rates, and anticipated hours for the Project that will be assigned as a Cost of the Work. Time and wages beyond 40 hours per week for salaried personnel will not be reimbursed.

§ 6.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Relocation and temporary out of town living costs of personnel, but only if approved by Owner in writing.

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### **§ 6.3 Subcontract Costs**

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

### **§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 6.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. The total rental cost of any piece of equipment for the duration of the Project that the Contractor or any related party owns shall not exceed 75% of the fair market value of that equipment at the commencement of the rental period. Where a rental agreement contains an option to purchase and this option is exercised, the equity accrued shall be credited to the Owner against the total rental cost of that equipment on the Work. Prior to beginning the Work, the Contractor shall submit a list to the Program Manager and Owner of rental equipment owned by the Contractor or a related party of the Contractor indicating the fair market value at commencement of the Work and the proposed rental rates. The Contractor shall attach to each monthly Application for Payment an itemized list of rental equipment owned by the Contractor or a related party and the applicable rates for such equipment used on the Project during that period.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office. There shall be no markup on these expenses.

**§ 6.5.5** That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

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*(Paragraph deleted)*

§ 6.5.7 Job site vehicle shall be limited to one per site or as agreed to in writing by the Owner. Rental rates for the job site vehicle shall include gas, maintenance, repairs, and taxes and licenses and shall not be billed separately. This single job site vehicle is in addition to the supervisors' vehicle allowances.

*(Paragraph deleted)*

## § 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. If the Owner optionally implements and funds directly an Owner Controlled Insurance Program (OCIP) for the Project, no insurance costs other than the insurance costs required in the OCIP contract provisions to be paid by Contractor shall be included in the Cost of the Work. However, the cost of the Performance and Payment Bonds required for the Contractor by this Agreement shall be included in the Cost of the Work.

*(Paragraphs deleted)*

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those to be provided by the Owner and those related to defective or nonconforming Work for which reimbursement is excluded by the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.

§ 6.6.6 Small tools shall be treated as a Cost item and are defined as those tools costing five hundred dollars (\$500.00) or less. A record showing the disposition of these tools is to be on file at the Contractor's office on the project site. Ownership of small tools not consumed during construction shall remain with the Owner upon completion of the Project.

§ 6.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 In lieu or renting certain items of equipment, machinery and tools, valued at more than five hundred dollars (\$500.00) from the Contractor or other third parties, the Owner reserves the right to have those items purchased and maintained as a Cost of the Work. A record showing the disposition of these items is to be on file at the Contractor's office on the project site. Ownership

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of the items not consumed during construction shall remain with the Owner upon completion of the Project.

**§ 6.6.10** Bond costs for Contractor's subcontractors.

**§ 6.7 Other Costs and Emergencies**

**§ 6.7.1** Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

**§ 6.7.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

**§ 6.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

**§ 6.7.4** The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, unless such costs are excluded by the provisions of Section 6.8.

**§ 6.8 Costs Not To Be Reimbursed**

**§ 6.8.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 6.2;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase, unless provided for in a separate Change Order.
- .9 Payments to Contractor's employees over and above their regular pay (bonuses, incentive pay, profit sharing, severance pay, etc.), including salary increases not identified in the Contractor's bid proposal.
- .10 Technology, Data Processing, Project Specific Web Sites, or Project Management System Cost incurred by the Contractor in preparing the Project Schedule, Payroll, Accounting, Project Cost Reports or Project Status Reports and any other reports necessary to the progress of the Work.
- .11 Any fees paid to Contractor organizations (AGC, ABC, etc.).
- .12 Contractor's business license.
- .13 Recruitment or training costs of personnel.
- .14 Overtime expense of any salaried personnel.

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.15 Except as provided in Section 6.7, any cost not specifically and expressly described in Section 6.

.16 Bond costs for Contractor's suppliers.

### **§ 6.9 Discounts, Rebates and Refunds**

**§ 6.9.1** Cash discounts obtained on payments made by the Contractor shall accrue to the Owner.

Trade discounts, commissions, volume discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

**§ 6.9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

*(Table deleted)(Paragraphs deleted)*