

PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of November 29, 2021 between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and Garland/DBS Inc. (**PROFESSIONAL**). **OWNER** intends to proceed with Family Care Center Roof Replacement Design Build in Lexington, Kentucky as described in the attached exhibits. The services are to include professional design and installation for the city. The services are hereinafter referred to as the Project.

OWNER and **PROFESSIONAL** in consideration of their mutual covenants herein agree in respect of the performance of Design and Installation of Family Care Center Roof by **PROFESSIONAL** and the payment for those services by **OWNER** as set forth below.

PROFESSIONAL was selected by **OWNER** based on the OMNIA Racine County, Wisconsin Master Agreement PW1925.

PROFESSIONAL shall provide Design and Installation of Family Care Center Roof for **OWNER** in all phases of the Project to which this Agreement applies, serve as **OWNER'S** representative for the Project as set forth below and shall give professional consultation and advice to **OWNER** during the performance of services hereunder.

SECTION 1 - BASIC SERVICES OF PROFESSIONAL

PROFESSIONAL shall perform all services as hereinafter stated which include customary planning and analysis incidental thereto.

The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits:

- Exhibit A – Family Care Center Roof Replacement Contract Documents
- Exhibit B – LFUCG General Conditions
- Exhibit C – Performance & Payment Bond
- Exhibit D – Special Conditions
- Exhibit E – OMNIA Racine County Wisconsin Master Agreement PW1925
- Exhibit F – Pearce Blackburn Roofing Form of Proposal
- Exhibit G – Preliminary Schedule

To the extent there is conflict among these provisions, the provisions of this Agreement shall take precedence, followed by the provisions of OMNIA Racine County Wisconsin Master Agreement PW1925.

After written authorization to proceed with the Project, **PROFESSIONAL** shall:

1. Notify the **OWNER** in writing of its authorized representative who shall act as Project Manager and liaison representative between the **PROFESSIONAL** and the **OWNER**.

2. Deliverables shall include but not be limited to:
 - a) Schematic Documents with Cost Estimate
 - b) Design Development Documents with Cost Estimate
 - c) 95% Construction Documents with Cost Estimate
 - d) 100% Construction Documents with Cost Estimate
 - e) Ready To Advertise Documents including Addendum
 - f) PreBid Meeting including Agenda and Meeting Minutes
 - g) Bid Summary
 - h) Permitting Documents
 - i) Construction Administration including Weekly Field Reports
 - j) BiWeekly Progress Meetings including Agenda and Meeting Minutes
 - k) Substantial Completion Deliverables
 - l) O&M Manuals including Submittals, Warranties, and Operation & Maintenance Instructions
 - m) Final Completion Deliverables
 - n) 1 Year Warranty Inspection & Report
3. Security For Faithful Performance
 - a) Simultaneously with the delivery of the executed Contracts, the PROFESSIONAL shall furnish a surety bond or bonds as security for the faithful performance of this Contract and for payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with this Contract, as specified in the General Conditions. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to the OWNER and authorized to do business in the Commonwealth of Kentucky.
 - b) All bonds required by this Contract and laws of this State shall be placed with agents licensed in the State of Kentucky. When the premium is paid for such coverages, the full commission shall be paid to such local agent who shall not divide such commission with any person other than a duly licensed resident local agent.
 - c) Contractor shall use standard Performance and Payment Bond forms such as documents provided with this contract book or AIA form A312-1984 (or later). Refer to Performance & Payment Bond Exhibit "C."

This Agreement together with the Exhibits and schedules identified above constitutes the entire Agreement between **OWNER** and **PROFESSIONAL** and supersedes all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

SECTION 2 - ADDITIONAL SERVICES BY PROFESSIONAL

- 2.1. The **OWNER** may desire to have the **PROFESSIONAL** perform work or render services in connection with this Project other than the scope provided by Exhibit A of this Agreement. Such work shall be considered as "Additional Services", subject to a change order, supplemental to this Agreement, setting forth the character and scope

thereof and the compensation therefore. Work under such change order shall not proceed until the **OWNER** gives written authorization.

- 2.2. Design services provided by the **PROFESSION** for clarifications, work change proposal requests, request for information, change orders, supplemental instructions, and other similar construction administration services necessary to carry out the project intent shall be at no additional cost to the **OWNER**.
- 2.3. All "Additional Services" is subject to prior written authorization of **OWNER** and necessary appropriations made by the Urban County Council.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall:

- 3.1. Provide criteria and information as to **OWNER'S** requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist **PROFESSIONAL** by placing at its disposal available information pertinent to the Project.
- 3.3. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **PROFESSIONAL**, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **PROFESSIONAL**.
- 3.4. Designate in writing a person to act as **OWNER'S** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define **OWNER'S** policies and decisions with respect to materials, equipment, elements and systems pertinent to **PROFESSIONAL'S** services.
- 3.5. Give written notice to **PROFESSIONAL** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **PROFESSIONAL'S** services, or any defect in the work of Contractor(s).
- 3.6. Furnish or direct **PROFESSIONAL** to provide, necessary Additional Services as stipulated in Section Two (2) of this Agreement or other services as required.

SECTION 4 - PERIOD OF SERVICES

- 4.1. Time of Completion and Liquidated Damages
 - a) The number of calendar days within which the Construction Work is to be substantially completed is **150 days** from Notice to Proceed, and Final

Completion shall be **15 days** from Substantial Completion. Refer to Preliminary Schedule Exhibit "G."

- b) Bidder must agree to commence construction work on or before a date to be specified in a written "Notice to Proceed" from the OWNER and to fully complete the Project within the time as specified in the Contract. Bidder must agree also to pay **\$250.00** per day thereafter deadline for substantial completion and **\$250.00** per day thereafter deadline for final completion.

- 4.2. The provisions of this Section Four (4) and the various rates of compensation for **PROFESSIONAL'S** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion.

SECTION 5 - PAYMENTS TO PROFESSIONAL

5.1 Methods of Payment for Services of PROFESSIONAL

5.1.1 For Basic Services.

All Lump Sum Pricing shall include all direct labor and supervision necessary to complete the item in a manner that meets or exceeds the **OWNER'S** satisfaction. It shall also include the labor payroll costs, overhead (such as unemployment taxes, general liability insurance, rent, utilities, phones, supplies, administrative salaries, F.I.C.A. sick and vacations, etc. disposal fees tool allowance, equipment, materials, profit and all other costs used on the job). The negotiated cost of services is established:

Design Services Cost	_____	\$0
Construction Cost	_____	\$1,141,007

(Refer to Pearce Blackburn Roofing Form of Proposal – Exhibit "F")

5.2. Times of Payment.

5.2.1. PROFESSIONAL shall submit a schedule of values subject to approval by the **OWNER** prior to starting work. The approved schedule of values will be the basis for monthly statements for Basic Services and Additional Services rendered. The Statements will be based upon **PROFESSIONAL'S** estimate of the proportion of the total services actually completed at the time of billing and are subject to approval by the **OWNER**. **OWNER** shall pay **PROFESSIONAL'S** monthly statements within thirty (30) days of receipt and approval of Application for Payment.

5.3. Other Provisions Concerning Payments.

5.3.1. In the event the Agreement is terminated by the **OWNER** without fault on the part of the **PROFESSIONAL**, the **PROFESSIONAL** shall be paid for the work performed or services rendered in an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered

to the **OWNER** is to the total amount of work provided for herein, as determined by mutual agreement between the **OWNER** and the **PROFESSIONAL**.

5.3.2. In the event the services of the **PROFESSIONAL** are terminated by the **OWNER** for fault on the part of the **PROFESSIONAL**, the **PROFESSIONAL** shall be paid reasonable value of the work performed or services rendered and delivered, and the amount to be paid shall be determined by the **OWNER**.

5.3.3. In the event the **PROFESSIONAL** shall terminate the Agreement because of gross delays caused by the **OWNER**, the **PROFESSIONAL** shall be paid as set forth in Section 5.3.1. above.

SECTION 6 – ADDITIONAL GENERAL CONSIDERATIONS

6.1. Termination

6.1.1. **PROFESSIONAL** may only terminate this Agreement due to **OWNER'S** material breach of the terms hereof which breach causes **PROFESSIONAL** to be unable to perform its duties and responsibilities under this Agreement, and only upon ten (10) days written notice to **OWNER**, and provided **OWNER** fails to cure such default within the ten (10) day period.

6.1.2. The **OWNER** reserves the right to terminate the Agreement for any reason at any time upon seven (7) days written notice to the **PROFESSIONAL**.

6.2. Ownership and Reuse of Documents.

All documents, including Drawings and Specifications, prepared by the **PROFESSIONAL** pursuant to this Agreement shall be delivered to and become the property of the **OWNER**. The **OWNER** shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to **PROFESSIONAL**.

6.3. Legal Responsibilities and Legal Relations.

6.3.1. The **PROFESSIONAL** shall familiarize itself with and shall at all times comply with all federal, state and local laws, ordinances, and regulations which in any manner affect the services of this Agreement.

6.3.2. In performing the services hereunder, the **PROFESSIONAL** and its **PROFESSIONALS**, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, the **PROFESSIONAL** shall be acting as an independent contractor. The **PROFESSIONAL** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **PROFESSIONAL** shall be solely responsible for any claims for wages or compensation by **PROFESSIONAL'S** employees, agents and representatives, including **PROFESSIONALS**, and shall save and hold **OWNER** harmless therefrom.

6.3.3. The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky, and that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

6.4. Successors and Assigns.

6.4.1. PROFESSIONAL binds itself and its partners, successors, executors, administrators, assigns and legal representatives to this Agreement in respect to all covenants, agreements and obligations of this Agreement. **PROFESSIONAL** shall not assign any interest, obligation or benefit in this Agreement. **PROFESSIONAL** shall not assign any interest, obligation or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent of **OWNER**.

6.4.2. The **PROFESSIONAL** shall not subcontract more than fifty percent (50%) of the work, based upon dollar value, to be provided under this Agreement. The **PROFESSIONAL** shall obtain written approval prior to subletting or assigning any services contained in this Agreement, and consent to sublet or assign any part of this Agreement shall not be construed to relieve the **PROFESSIONAL** of any responsibility for compliance with the provisions of this Agreement.

6.4.3. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **OWNER** and **PROFESSIONAL**.

6.5. Disputes.

Except as otherwise provided in this Agreement, any dispute concerning the amount of payment due the **PROFESSIONAL** or any dispute concerning any question of fact of any act to be performed under this Agreement, which is not disposed of by agreement between the Lexington-Fayette Urban County Government and the **PROFESSIONAL**, shall be submitted to the Commissioner, Department of General Services, Lexington-Fayette Urban County Government for review. The decision of the Commissioner as to the determination of such dispute shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the **PROFESSIONAL** shall proceed diligently with the performance of the Agreement in accordance with the directions of the **OWNER**.

6.6. Accuracy of PROFESSIONAL'S Work.

The **PROFESSIONAL** shall be required to perform this Agreement in accordance with the degree of ordinary and reasonable skill and care usually exercised by the architect/engineer prevailing at the time, place and under similar conditions as the services hereunder are rendered.

The **PROFESSIONAL** shall be responsible for the accuracy of all work, even though Drawings and Specifications have been accepted by the **OWNER**, and shall make any necessary revisions or corrections resulting from errors and/or omissions on the part of the **PROFESSIONAL**, without additional compensation. By submission of reports, calculations and Drawings and Specifications to the **OWNER**, the **PROFESSIONAL** has made a statement that, to the best of its belief and knowledge, the information is accurate. Failure on the part of **PROFESSIONAL** to provide the expected level of accuracy may be grounds for the **OWNER** to terminate this Agreement.

6.7. Security Clause.

The **PROFESSIONAL** certifies that it shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization except the **OWNER** without prior approval of the **OWNER** unless required by law.

6.8. Access to Records.

The **PROFESSIONAL** shall maintain all books, documents, papers, and accounting records, and make such materials available at their office at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the **OWNER**, and copies thereof shall be furnished if requested. Failure to maintain such records for three (3) years after the date of final payment may be grounds for the **OWNER** to disqualify the **PROFESSIONAL** from consideration for future **PROFESSIONAL** service agreements.

6.9. Required Risk Management Provisions.

The Risk Management Provisions of this agreement are incorporated herein by reference as if fully stated. Refer to the Special Conditions Exhibit "D" for Risk Management Provisions. Copies of the required Certificates of Insurance shall be provided to **OWNER** as required therein.

SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this service agreement, the **PROFESSIONAL** agrees as follows:

7.1. The **PROFESSIONAL** will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age or handicap. The **PROFESSIONAL** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, age or handicap. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The **PROFESSIONAL** agrees to post in conspicuous places, available to employees and

applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

- 7.2 The **PROFESSIONAL** will, in all solicitations or advertisements for employees placed by or on behalf of the **PROFESSIONAL**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, age (between forty and seventy), or handicap.

SECTION 8 - SPECIAL PROVISIONS

- 8.1. This Agreement is subject to the following provisions.

8.1.2. Pursuant to subparagraph 3.4 of this Agreement, **OWNER'S** representative is authorized to monitor and review the performance of work of the **PROFESSIONAL**. Documents, data, reports and all matters associated with carrying out this Agreement shall be addressed to the **OWNER'S** representative or their designee. Questions by the **PROFESSIONAL** regarding interpretations of the terms, provisions and requirements under this Agreement shall be addressed to the **OWNER'S** representative or their designee. The **PROFESSIONAL** shall look only to the **OWNER'S** representative or their designee for direction in its performance under this Agreement; no other direction shall be binding upon **OWNER**. **OWNER** shall respond to written requests by **PROFESSIONAL** within thirty (30) days.

- 8.2. **NO THIRD PARTY RIGHTS.** This agreement does not create a contractual relationship with or right of action in favor of a third party against either **OWNER** or **PROFESSIONAL**.
- 8.3. **UNENFORCEABLE TERMS/SURVIVABILITY.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.
- 8.4. **NON-WAIVER.** The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER (LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT):

Signature: Linda Gorton
MAYOR

Date: 12/13/2021

ATTEST:
Margerie Stock
CLERK OF URBAN COUNTY COUNCIL

PROFESSIONAL (Garland/DBS Inc.):

Signature: Scott Croft

Printed Name: Scott Croft

Position: VP/GM

Date: 11-29-2021



~~State of Ohio~~
~~COMMONWEALTH OF KENTUCKY~~
COUNTY OF (Coydage)

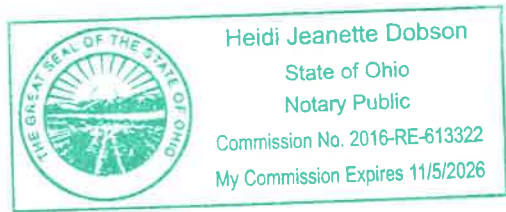
The foregoing instrument was subscribed, sworn to and acknowledged before me by

Scott Croft as VP/GM for

and on behalf of GARLAND/DBS, INC., on this the 29 day of November, 2021.

My commission expires: 11-5-2026

Heidi Jeanette Dobson
NOTARY PUBLIC, STATE AT LARGE, KY OHIO



The Garland Company, Inc.

Roof Asset Management Program



RAMP



LFUCG-Family Care Center Roof Bid Package

Prepared By
Garland/DBS Team

Prepared For
All Bidders

November 11, 2021

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LFUCG– Family Care Center
Re-Roofing Project
Addendum #1 – November 18th 2021

1. Please note receipt of this addendum on the Bid Proposal Form.
2. Please review the timeline on the bid summary page in the bid package.
3. The Roofing Contractor is responsible for obtaining all necessary permits as they relate to this project.
4. Safety – Follow all OSHA regulations.
5. The plumbing and roofing contractors are responsible for all drains on the building.
6. Tuff Wrap will be installing all their interior protection on a Saturday prior to the start of the project.
7. All counter flashing locations where attached in a reglet, the reglet cut in the masonry wall is to be reused if possible or the contractor is responsible for cutting a new reglet into the masonry wall above the present location.
8. Construction schedule: Substantial will be 150 days from notice to proceed
 - a. Plus 15 days for 100% completion.
9. The only materials that can be stored on the roof are those materials needed for each phasing section that the contractor is actively working in. All other materials needed for other phases of the project should be stored in the staging area on the ground.
10. When roofing materials are removed to expose a structural substrate, if the substrate appears to be in questionable condition (ie. Rotted wood, rusted steel, etc.) the sub-contractor should notify Garland/DBS immediately and in writing the same day - including both Garland representatives (Rick S. & Zach H.) as well as the internal Garland / DBS project manager (Antonio M).
 - i. amontemarano@garlandind.com
 - ii. zhadden@garlandind.com
 - iii. rsunderman@garlandind.com
11. If any lawn or landscape is damaged by the sub-contractor, the lawn or landscape is to be repaired / replaced as needed to return the appropriate area in the same condition it was found or better.
12. Scope of Work Edits:
 - a. Item 5-a; Delete the word “Non” before treated wood blocking.
 - b. All new wood blocking is to be of treated lumber.
 - c. Item 6-a, Delete the word “Damaged” before wood blocking.
 - d. All present wood blocking is to be replaced with new treated wood 2x blocking of the same dimension as currently present.
13. Base Bid to include an allowance for wet roofing replacement: 2000 sf.

14. Sub-contractor to provide Garland/DBS with a detailed record including photos and measurements of all wet roofing found and replaced. This data needs to be provided before each progress meeting.
15. Questions by Attendees: Are facemasks required while performing work on site?
 - a. Answer:
 - i. Facemasks are required for all contractors and sub-contractors while inside any parts of the building or in any common area where LFUCG employees, students, and/or parents may be present. Facemasks are not required on the roof or in outside areas that are not common areas of such previous mentioned constituents.

LFUCG-Palmer Building
Re-roof project
Bid Proposal Summary

Bids to Sent to: dbsbids@garlandind.com

Project Breakdown

- Base Bid 1: 20-year EPDM Roof
 - Additional Items included
 - All new Edge Metal & Coping
 - Removal of skylight
 - Plumbing-New roof drains
 - Interior protection

Important Dates & Times

- Last Questions regarding the project: **Wednesday November 17th 12:00 PM**
- Addendum Issue date: **Thursday November 18th**
- Bid Due Date: **Tuesday November 23rd 4:00 PM**

Additional Important Details

LFUCG has chosen to procure these roofing projects via the Omnia Partners Contract method with Garland/DBS INC

Garland/DBS reserves the right to reject any and/or all bids to determine which bids are in substantial compliance on behalf of LFUCG.

The construction schedule for this project is projected to be a late winter/Early Spring 2022 project.

Roofing contractor will have 150 days for Substantial completion and an additional 15 days for Final Completion. This totals up to 165 days for Final Completion once the contract is administered to the contractor.

Liquidated damaged will be assessed in the amount of \$250 per calendar day for failure to meet substantial completion and of \$250 per calendar day for failure. to meet final completion

The bid should meet all requirements for bidding as typical with all DBS Projects.

Please note all line items that are required by the contractors in addition to the base bid items.

This is an occupied Childcare facility. There shall be no excessive noise (sawing, grinding, hammer drilling etc) between the hours of 12 pm – 2:30 pm.

Contractor will be required to update with Garland/DBS on where they will be on the roof in relation to the interior of the building. They are only allowed to work in this designated area until they update the roof phase plan the following week.
School hours range from 6:30 am – 5:30 PM each day.

It is the contractor's responsibility to secure all materials staged on site. Roofing materials cannot be stored on the roof.

The winning contractor will be required to provide a detailed schedule of values and construction schedule within 24 hours of notification that they are the apparent low bid. The Contractor shall coordinate break down construction schedule to align with the phasing plan for the project.

If you have any questions, please do not hesitate to contact me. Thank you.

h



THE GARLAND COMPANY, INC.

HIGH PERFORMANCE ROOFING AND BUILDING ENVELOPE SYSTEMS

3800 EAST 91ST. STREET • CLEVELAND, OHIO 44105-2197

PHONE: (216) 641-7500 • FAX: (216) 641-0633

NATIONWIDE: 1-800-321-9336

LFUCG Family Care Center

Recover EPDM Roof Replacement

Scope of work: (By Garland/DBS contracted Roofing Company)

1. Provide all labor, equipment, and materials to install the roof system over the properly prepared substrate.
 - a. Provide carbon filters for all roof top units throughout the duration of the project.
 - i. Disclaimer: The roofing contractor is responsible for completing all work associated with the Contract Documents unless specified to be performed by a different contractor below.
2. Wet-Vacuum the entire roof surface. Eliminate all loose pea gravel from the surface of the roof.
 - a. Spud down any high areas of adhered asphalt and gravel to insure a smooth substrate.
3. For each wet roofing area as marked by the provided infrared scan:
 - a. Remove existing roofing and insulation layers down to the metal deck for all areas marked wet provided by an infrared scan.
 - b. Fill these areas with poly-iso insulation to match the insulation height and taper design of the area.
 - c. Install insulation layers with mechanical fasteners per uplift calculations.
 - d. Plug drains to prevent debris from entering plumbing.
 - i. Base Bid to include 2000 sf of wet roofing removal/replacement.
 - ii. Provide a unit cost for price per sq ft for wet insulation removal in addition to the 2000 sf that is to be included in the base bid per DBS bid form.
4. All Drains to be replaced by plumbing contractor: (plumbing scope below)
 - a. Coordinate as needed with all trades.
 - b. New Drains to have all new bowls, piping below, drain strainers, bolts, clamping rings, etc.
 - c. Coordinate drain height to be located as close to the deck as possible with a wood nailer below.
 - d. Plug each drain during installation of roofing and unplug before end of each day.
 - e. Remove all roofing materials and insulation at each drain 6 ft in each direction. Spud the remaining gravel for the related roofing area down to the existing membrane - 12 inches past the edge of the patch on all sides. This will provide a clean membrane for the patch to be sealed into the existing roofing membrane.
 - f. Using rigid & tapered poly iso insulation create a 4 ft x 4 ft sump area starting at the height of the drain.
5. Remove existing metal coping cap.
 - a. Remove all present wood blocking if present and install one layer of continuous 2x non treated wood blocking.
 - b. Provide temporary water proofing membrane over all parapet walls as needed if not flashed the same day.

6. Remove all existing flashings around all roof perimeter edges and all curb penetrations to the substrate.
 - a. Replace damaged wood blocking as need per unit cost.
 - b. Provide unit cost for replacement of wood blocking (non-treated 2x) per DBS bid form.
7. Prime existing roof with insulation adhesive primer.
8. Install ½ inch densdeck prime recovery board over existing roof and parapet walls (use fasteners to fasten wall board commonly. Taper the edges of the sump to the drains.
9. Install a 60 mil full adhered EPDM roof over the densdeck prime using the required adhesive.
 - a. The membrane flashing should run over the top of the parapet walls and turn down the front face of the parapet wall 8 inches oc.
10. Install Garland's pre-manufactured metal coping system.
 - a. Standard color chosen by client.
 - b. Follow manufacturer's installation guidelines.
 - c. 2x wood blocking required to be present to fasten coping chairs into.

Note 1: During the project roofing contractor will be required to fence in the material and staging area while onsite and keep the fenced area locked while not on-site. Lifts shall be stored in the contractor staging area when not in use.

Note 2: There will be an additional IR Scan performed by Garland/DBS prior to the start of the project to verify the current IR Scan. Any additional wet insulation that is detected will be marked on the roof.

Removal of Skylight (By Garland/DBS contracted Roofing Company)

1. Remove the roof membrane along the flashing and cut out the rigid insulation as required to expose the metal roof deck around the skylight.
2. Remove the skylight and dispose.
3. Install a section of new roof deck to cover the openings and overlap (6 to 9") the existing deck and support framing. The new metal roof deck shall match the profile of the existing metal. Use 20 gage galvanized deck with a minimum steel yield strength of 33 ksi. Fasten Deck through the existing deck and into the support steel members using #12 TEK Screws at 6 inches (max) or center and use three (min) #10 at side laps.
4. Seal the new deck pieces together and to the existing deck with butyl tape and waterproof caulking.
5. Install new rigid insulation over the enclosed opening (new deck). Insulation shall match the existing thickness and slope. Attach insulation to metal deck to match the surrounds roof areas using mechanical fasteners.
6. Interior finish repairs associated with the removal of the skylights shall be performed by the Owner.
7. Refer to sketched attached in the Bid Package.

Plumbing (By Garland/DBS contracted Plumbing Company)

1. Plumber will work directly under Garland/DBS.
2. Plumber will work with awarded roofing contractor to coordinate the scope of work.
3. Plumbing Scope of work
 - a. Disconnect and remove existing roof drains and accessories.
 - b. Provide and install new roof drains of the same size as existing and all related accessories.
 - c. Roof drains will have plastic domes.

- d. 2-3 Drains will be completed per day based on the roofing contractor' schedule.
- e. Roof drains will be insulated on the underside of the drains, cast iron 90's and all piping.
- f. Plumber will replace section of pipe between roof drain and 90, cast iron 90 and 1' section past the 90.
- g. All interior lifts will be covered during regular installation time.

Interior Protection (By Garland/DBS contracted Interior Protection Company)

1. Interior protection company will work directly under Garland/DBS.
2. A sub-contractor specializing in interior protection specifically to provide 15'x15' tarps at each skylight replacement area only. The interior protection shall be installed per manufacturer recommendations. This is not to be included in the roofers proposal and will be provided by Garland with a separate contractor.

End of Section

Lisa Grober, AIA, LEED AP
Administration Officer
Division of General Services - LFUCG

Subject: Family Care Center – Skylight Closure

Date: March 16, 2020

Ron Jackson, P.E. (R. E. Jackson Engineers, PLLC) at Mr. Zach Hadden's request reviewed the skylights at the Family Care Center that are to be removed to make recommendations on closing the roof opening. The existing building drawings were also provided which showed details that appear to match the existing construction of the skylights that were reviewed.

Recommendations:

1. Remove or peel back the roof membrane along with the flashing and cut out the rigid insulation as required to expose the metal roof deck around the skylight.
2. Remove the skylight along with its frame. The building angles will remain in place, to be used for support of the new roof deck.
3. Install a section of new roof deck to cover the openings and overlap (~6 to 9") the existing deck and support framing. The new metal roof deck shall match the profile of the existing metal. Use 20 gage galvanized (G60, ASTM A653) deck with a minimum steel yield strength of 33 ksi. Fasten deck through the existing deck and into the support steel members using #12 TEK screws at 6 inches (max.) on center and use three (min.) #10 at sidelaps.
4. Seal the new deck pieces together and to the existing deck with butyl tape and waterproof caulking.
5. Install new rigid insulation over the enclosed opening (new deck). Insulation shall match the existing insulation thickness and slope. Attach (glue) insulation to metal deck. (No low spots)
6. Provide new roofing membrane that matches and is compatible to the existing membrane. Bond (glue) the new membrane to the existing membrane. This should be made water tight.

Refer to sketches attached.

If you have any questions please call me (cell 859 333-2096, office 859 280-2909).

Thank You,



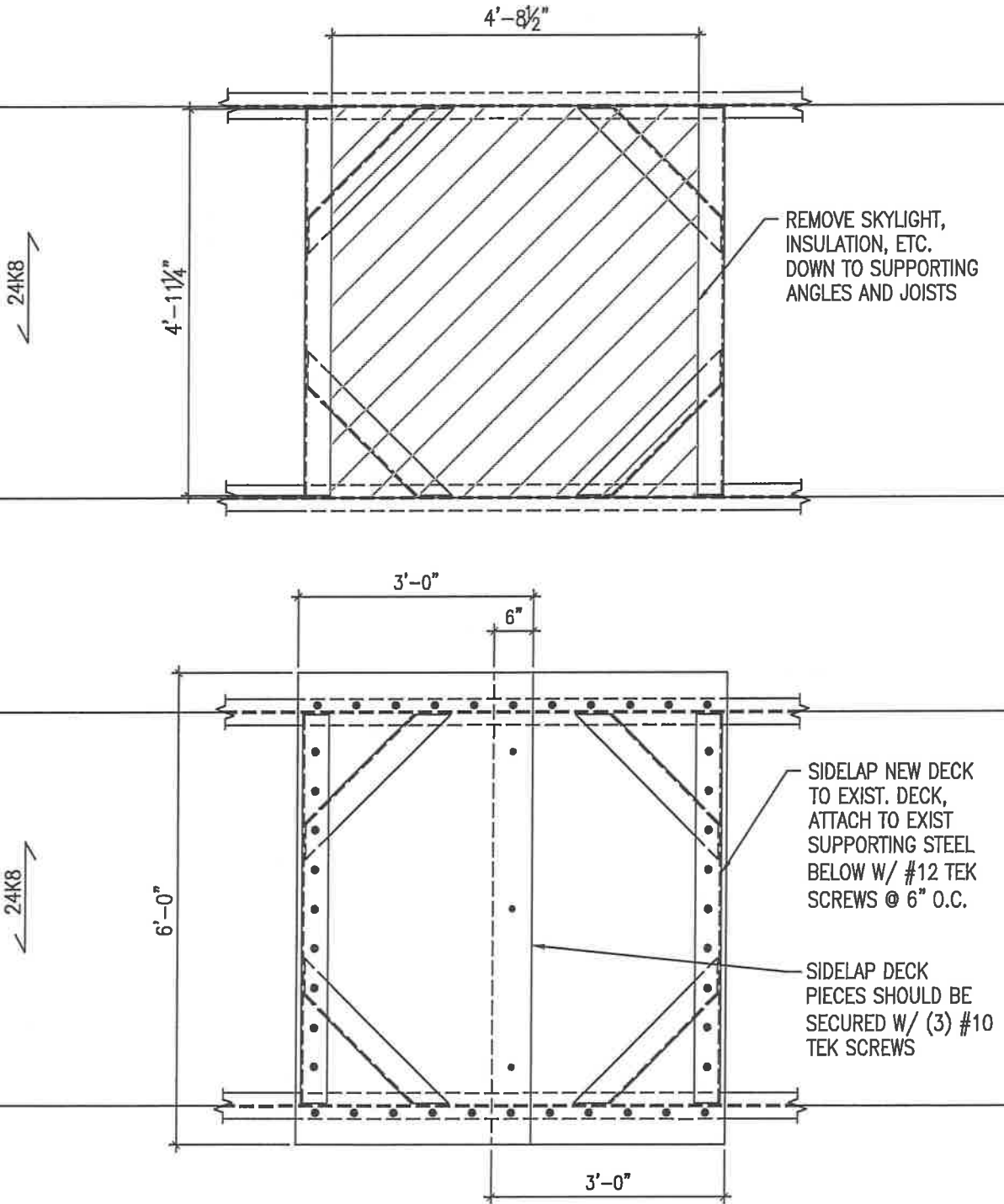
Ron Jackson, PE
R. E. Jackson Engineers, PLLC
811 Corporate Drive, Suite 106
Lexington, KY 40503

NOTE:

THE NEW DECK SHALL MATCH THE EXIST. DECK PROFILE. USE 20 GA. GALVANIZED STEEL DECK W/ A MIN. STRENGTH OF 33 KSI.

ALL DECK SEAMS AND LAPS SHALL BE SEALED TOGETHER W/ BUTYL TAPE & WATERPROOF CAULKING.

REINSTALL ROOFING MEMBRANE & INSULATION AFTER DECK HAS BEEN INSTALLED. THIS SHOULD BE WATER TIGHT AND LIKE NEW CONDITION.



R.E. JACKSON ENGINEERS, PLLC
 811 CORPORATE DR, STE 106 LEXINGTON, KY 40503
 PHONE (859) 280-2909
 FAX (859) 296-1196

SKYLIGHT DEMO & PLAN
 FAMILY CARE CENTER
 LEXINGTON, KY

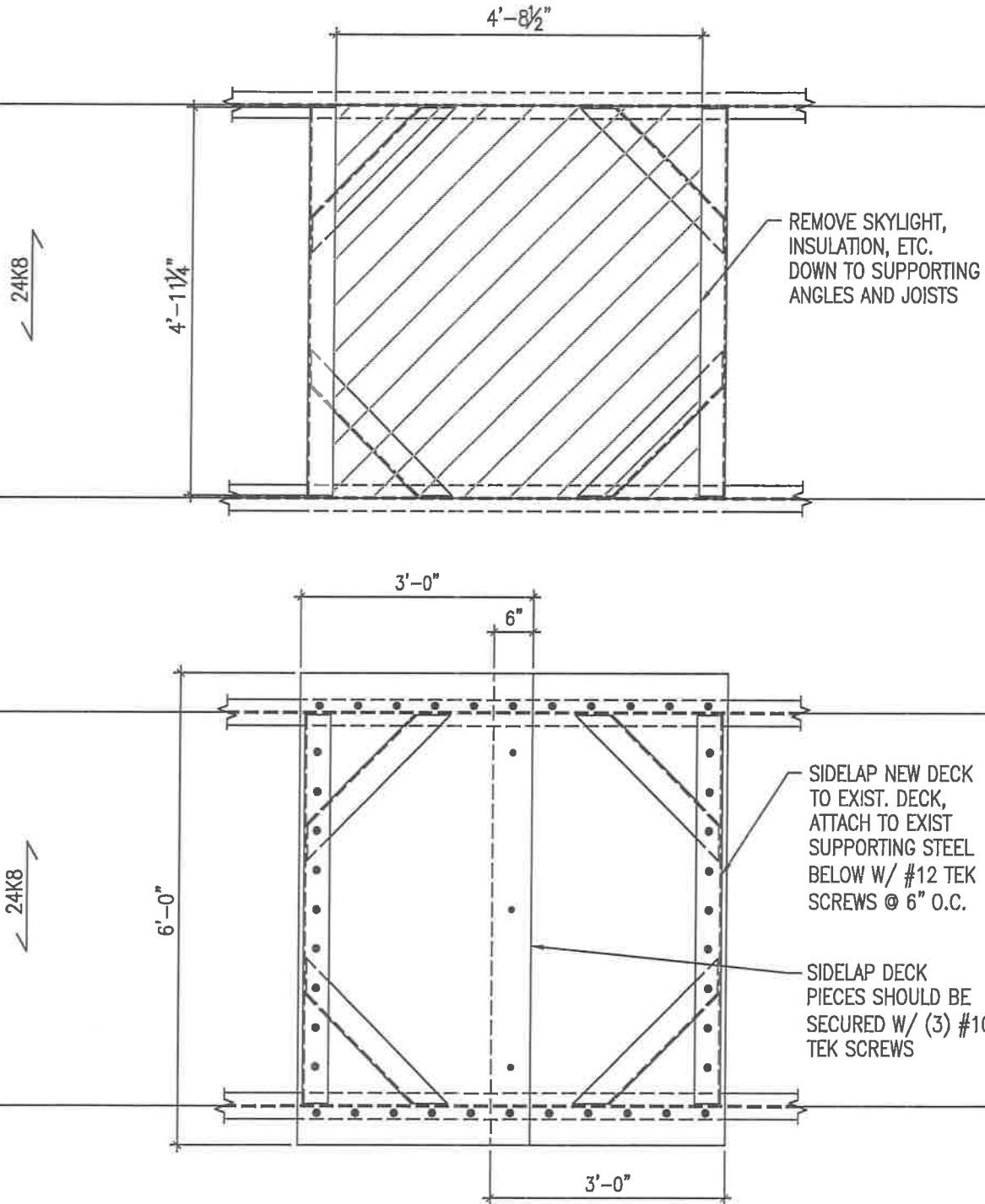
Date: 3/16/2020
 Project Number
 S-1

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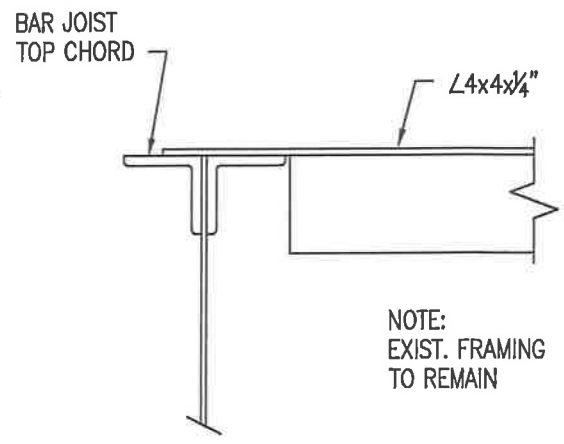
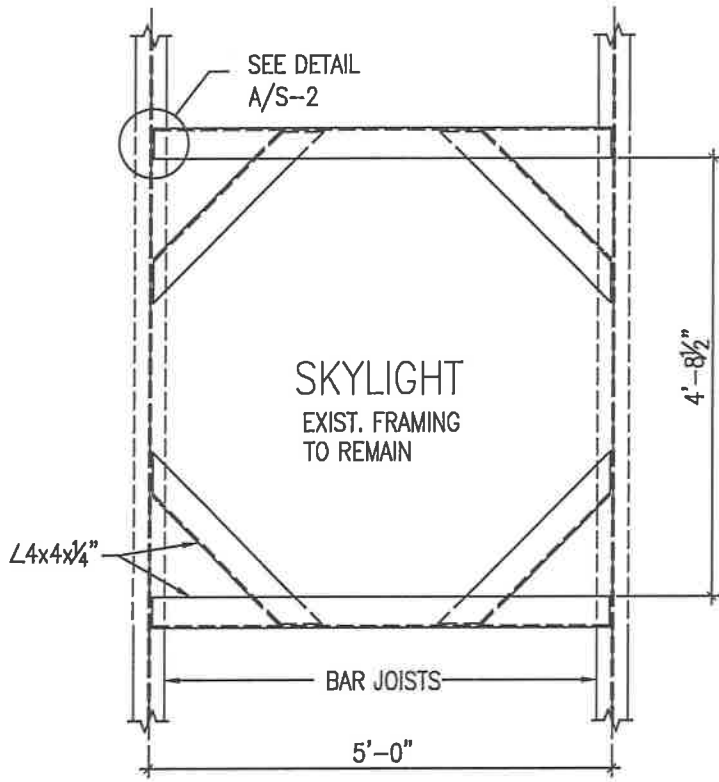
SKYLIGHT DEMO & PLAN

FAMILY CARE CENTER
LEXINGTON, KY

Date: 3/18/2020

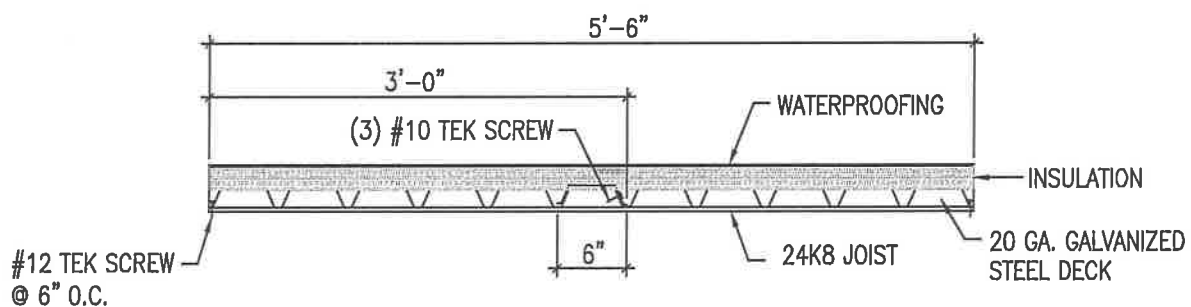
Project Number

S-1



A
S-2
DETAIL
 N.T.S.

TYPICAL SKYLIGHT FRAMING DETAIL
SCALE: 3/4"=1'-0"

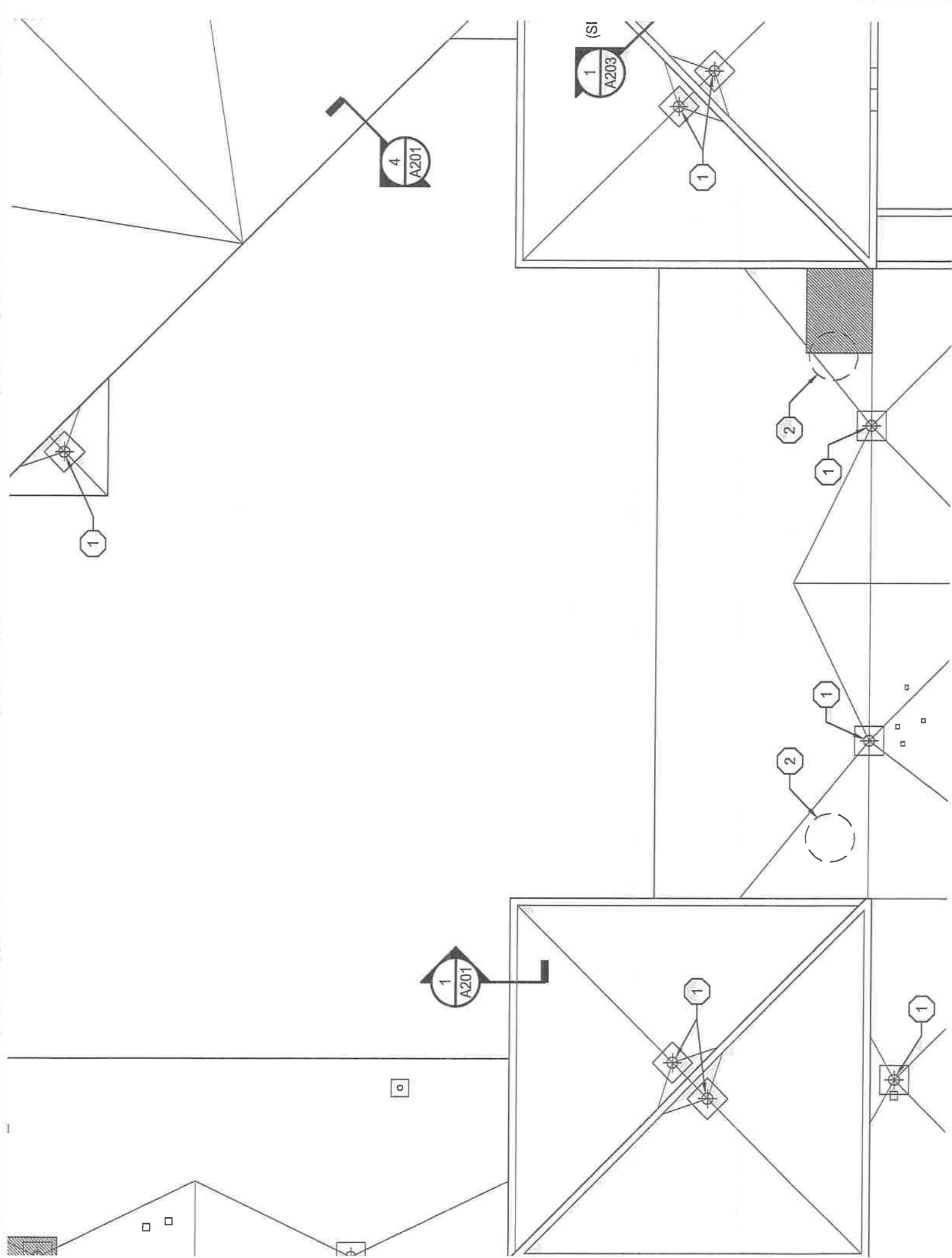


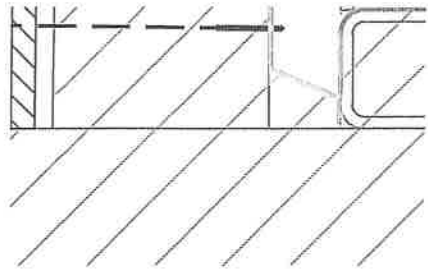
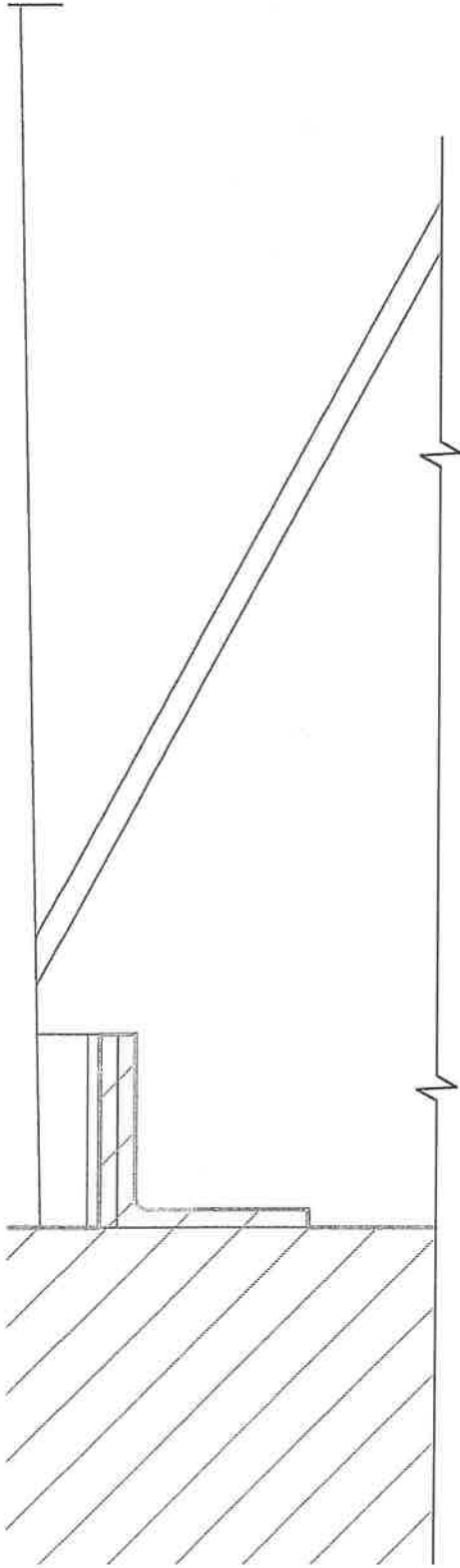
TYPICAL SIDELAP FRAMING DETAIL

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SKYLIGHT DETAILS
 FAMILY CARE CENTER
 LEXINGTON, KY

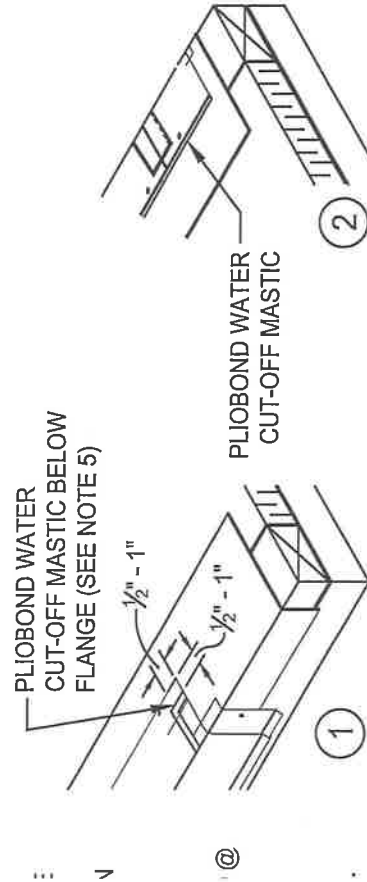
Date: 3/16/2020
 Project Number
S-2





IL

3 TYP
A201 SCALE



PLY COVERED BY CURED EPDM MEMBRANE.
NAIL HEAD.

CEMENT, SCRUB THE METAL FLANGE WITH
WHEN SPlice TAPE IS USED, PRIMER IS

IT BE PLACED NO MORE THAN 1/2" FROM

IT MUST BE PROVIDED FOR DRAINAGE.

COVER MUST BE SEALED AT ALL JOINTS.
FACTURER FOR APPROPRIATE SEALANT.

NOTES:

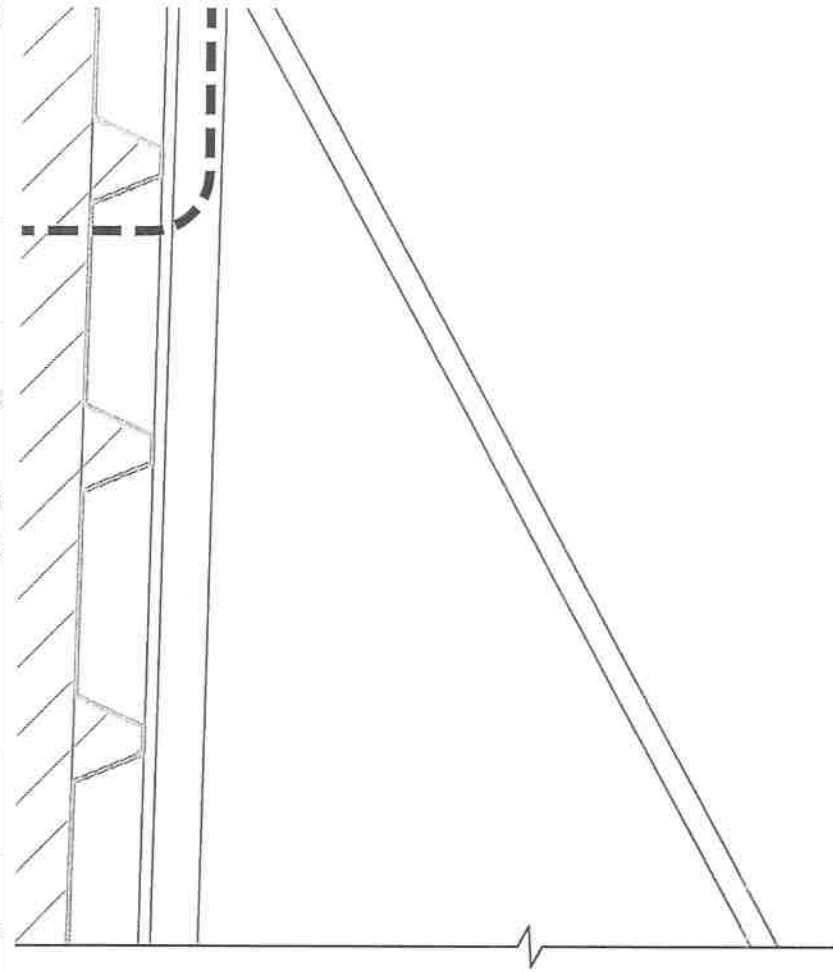
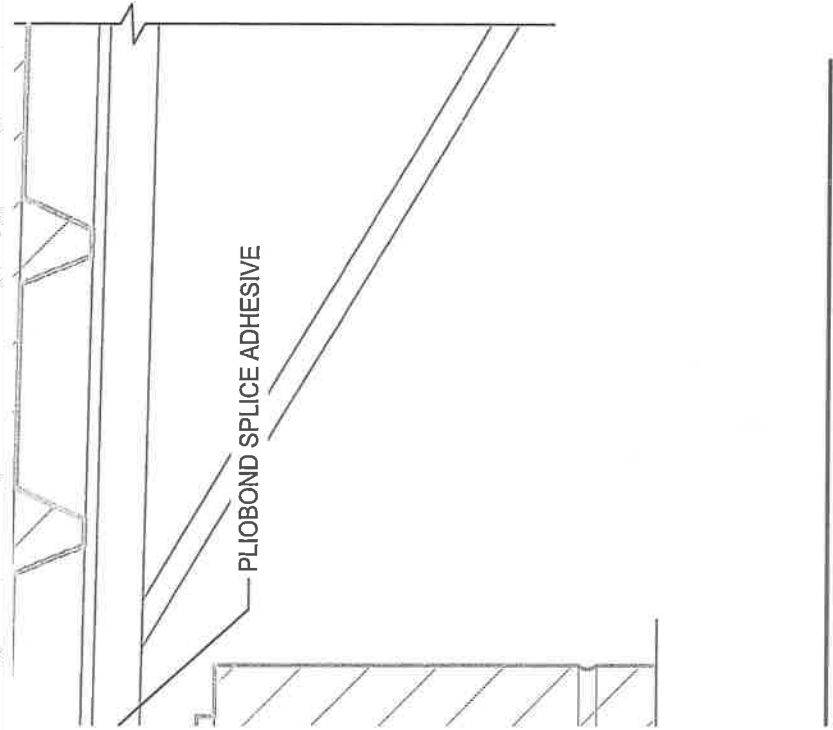
1. MEMBRANE SHOULD BE EXTENDED AT CORNERS TO PROVIDE COMPLETE COVERAGE OF THE TOP WALL SURFACE.
2. REFERENCE SPECIFICATION FOR SURFACING, MEMBRANE ADHESIVE TYPE, COVERBOARD TYPE, & ATTACHMENT METHOD.

COPING COVEI
PER

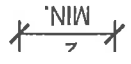
6" CONCEALED :

16 GA.

(4) FASTENERS PER

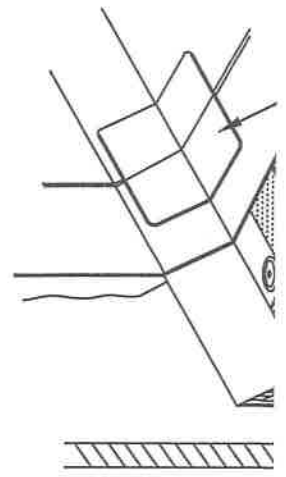


XISTING
IG W/ NEW
D.



2
A202

ROOF DETAIL
SCALE: 3" = 1'-0"





2 ROOF DRAIN DETAIL

SCALE: 3" = 1'-0"

A203

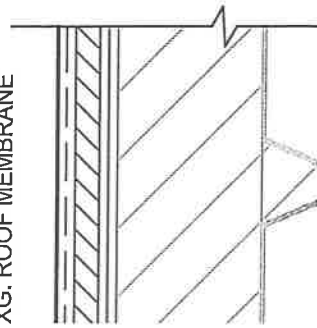
USE EXG. COUNTERFLASHING UNLESS
 DETERMINED OTHERWISE

(P. PERIMETER STRIP DETAIL, O.H.)

RUBBERTITE EPDM MEMBRANE, FASTEN
 APPROX. 12" O.C.

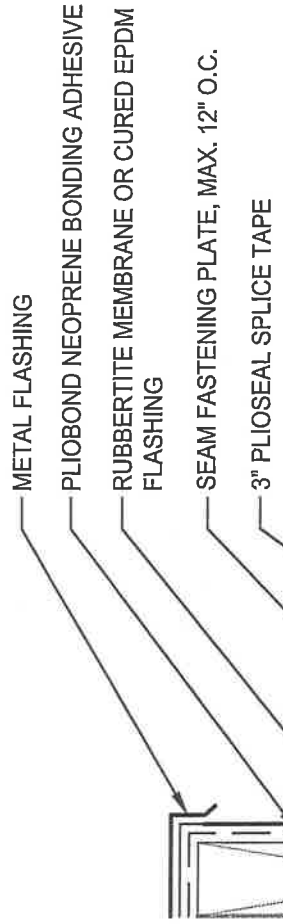
PLIOBOND NEOPRENE BONDING ADHESIVE
 3" DENSDECK COVERBOARD

EXG. ROOF MEMBRANE

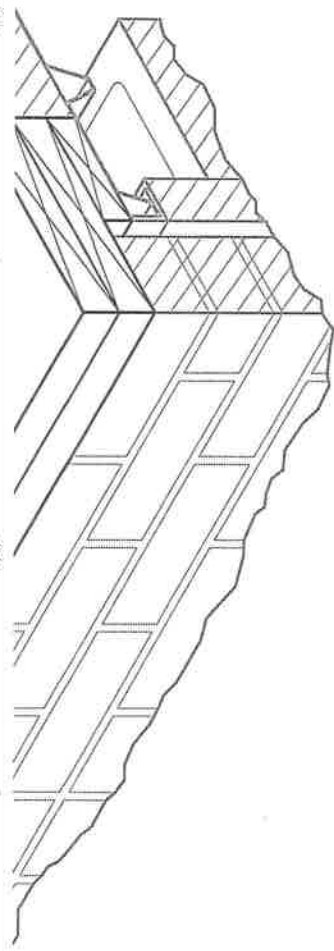


CURB FLASHING NOTES:

1. FOR ALTERNATE CURB FLASHING, REFER TO DETAIL IN FRONT END SPECIFICATIONS.
2. POLYMER SEAM PLATES ARE REQUIRED IN LIEU OF SEAM FASTENING PLATES FOR MECHANICALLY-FASTENED ROOFING SYSTEMS OVER STEEL DECKS.
3. IF VERTICAL SPLICE IS NOT LOCATED AT CORNER, 6" WIDE PRESSURE-SENSITIVE ELASTOFORM FLASHING MUST BE CENTERED OVER FIELD SPLICE AT ANGLE CHANGE.
4. FASTENING PLATES MAY BE INSTALLED VERTICALLY.
5. APPLY PRIMER PRIOR TO INSTALLING SPLICE TAPE.
6. SPLICE ADHESIVE MAY BE USED IN LIEU OF SPLICE TAPE, REFER TO DETAIL IN FRONT END SPECIFICATIONS.
7. LAP SEALANT IS REQUIRED ON CUT EDGES OF REINFORCED MEMBRANE.

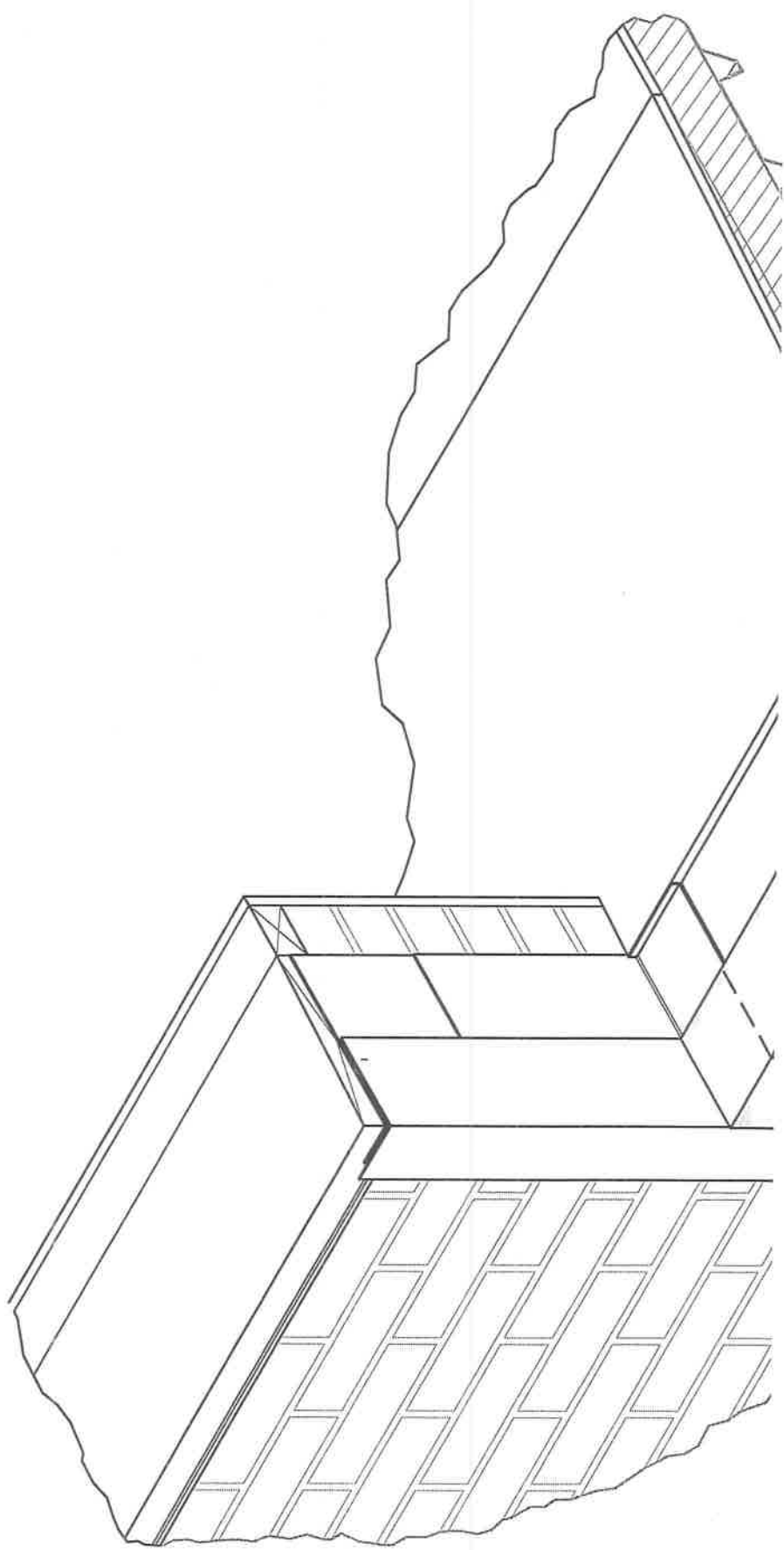


RUBBER

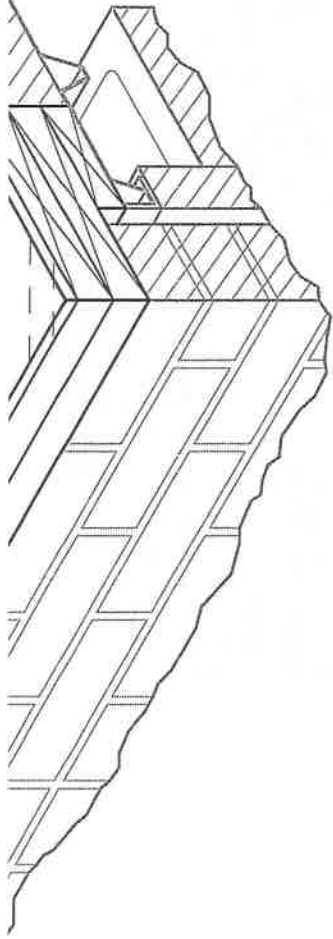


2 STEP #2 - COVER BOARD & 1ST LAYER OF RUBBER

A204 SCALE: 1 1/2" = 1'-0"



RUBBER

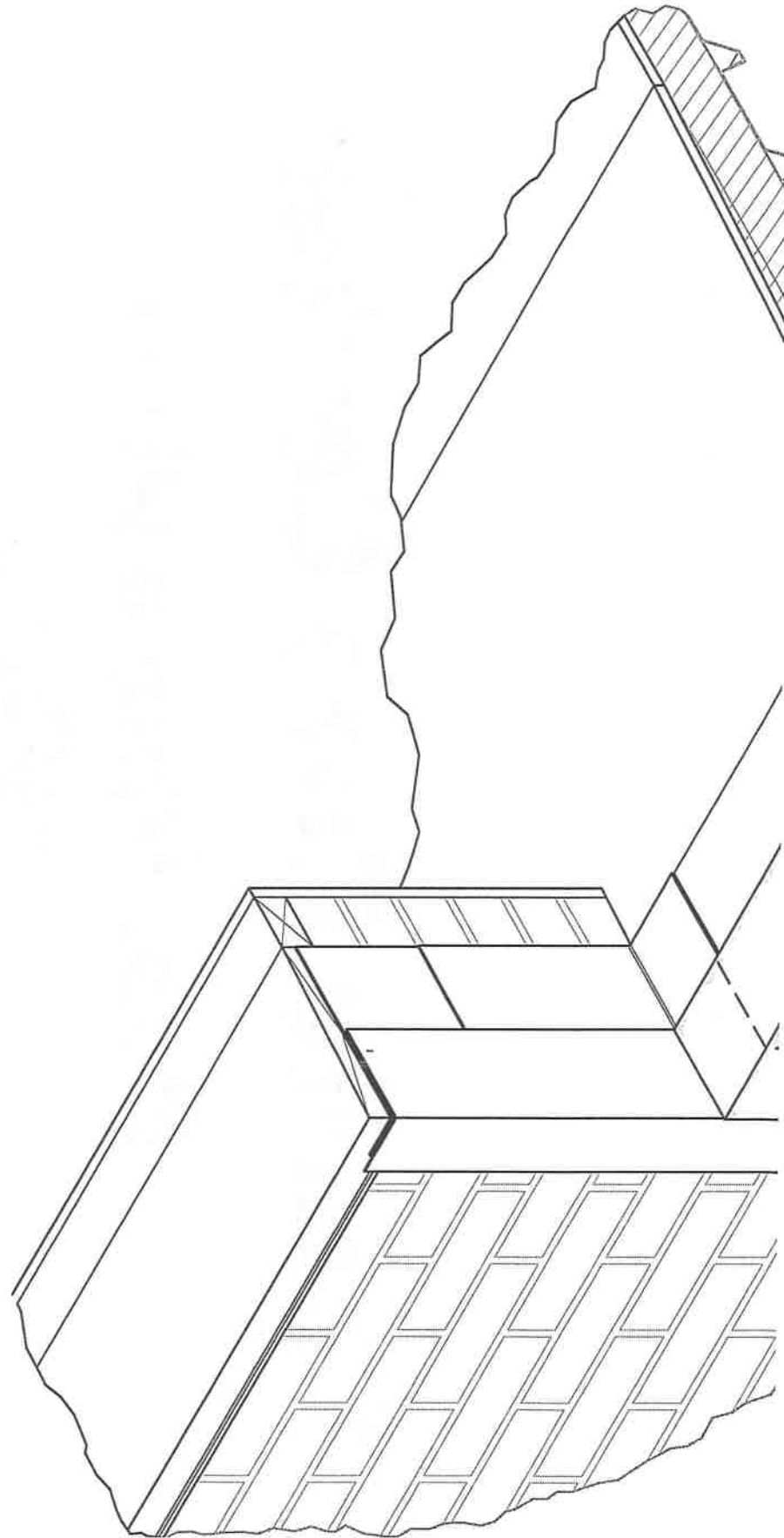


COVER BOARD TO BE APPLIED OVER EXG. ROOFING

2
A204

STEP #2 - COVER BOARD & 1ST LAYER OF RUBBER

SCALE: 1 1/2" = 1'-0"



Family Care Center

Roof Phase Plan





Constru Phas

Construction S

Weeks 1-4

Roof Sections B1 & B2

Weeks 4-7

Roof Sections C1, C2, A2

Weeks 7-10

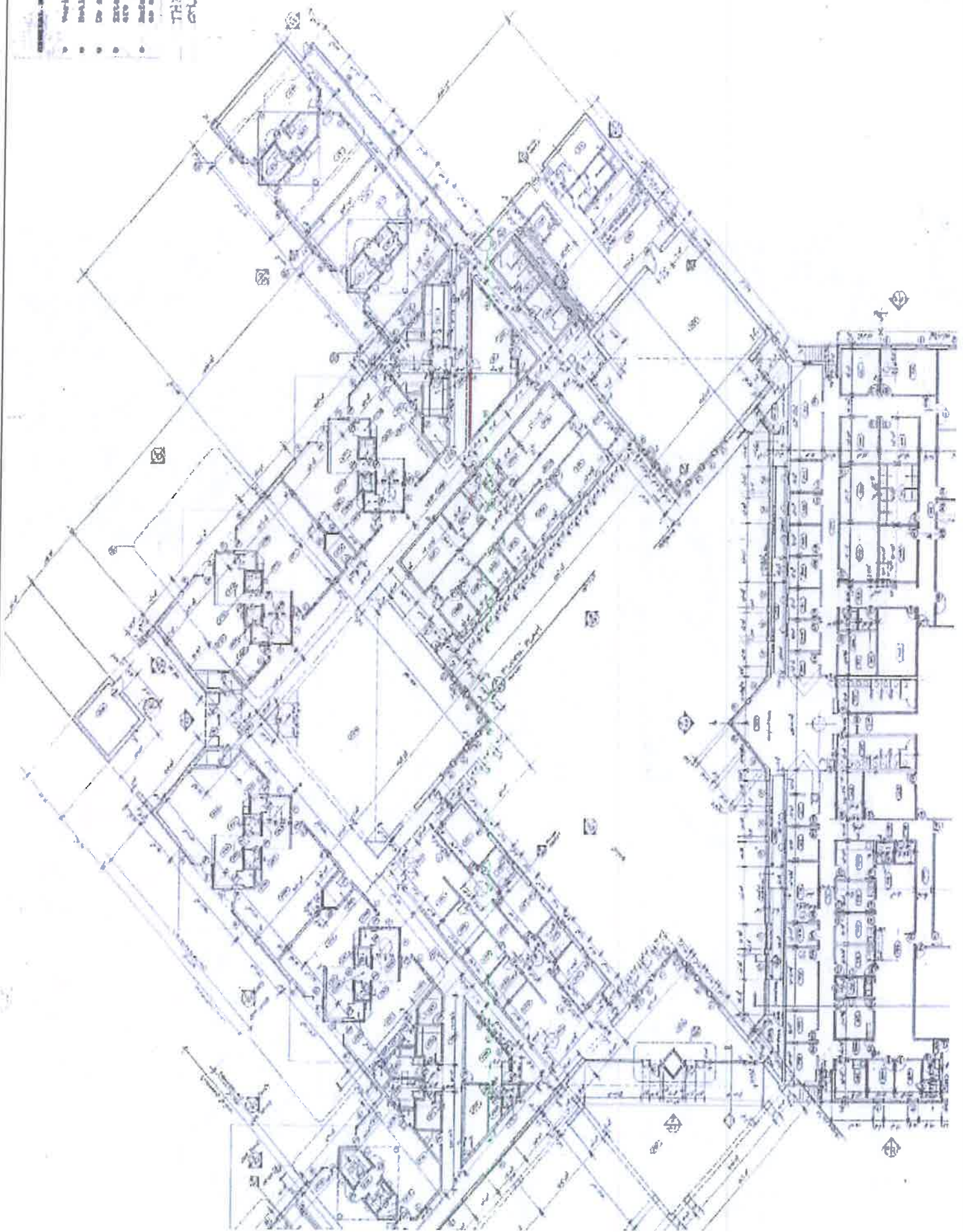
Roof Sections A1





- GENERAL NOTES**
- Verify all
 - Verify level
 - Do not use
 - Excavate &
 - are to be
 - as noted.

THIS IS ONLY A



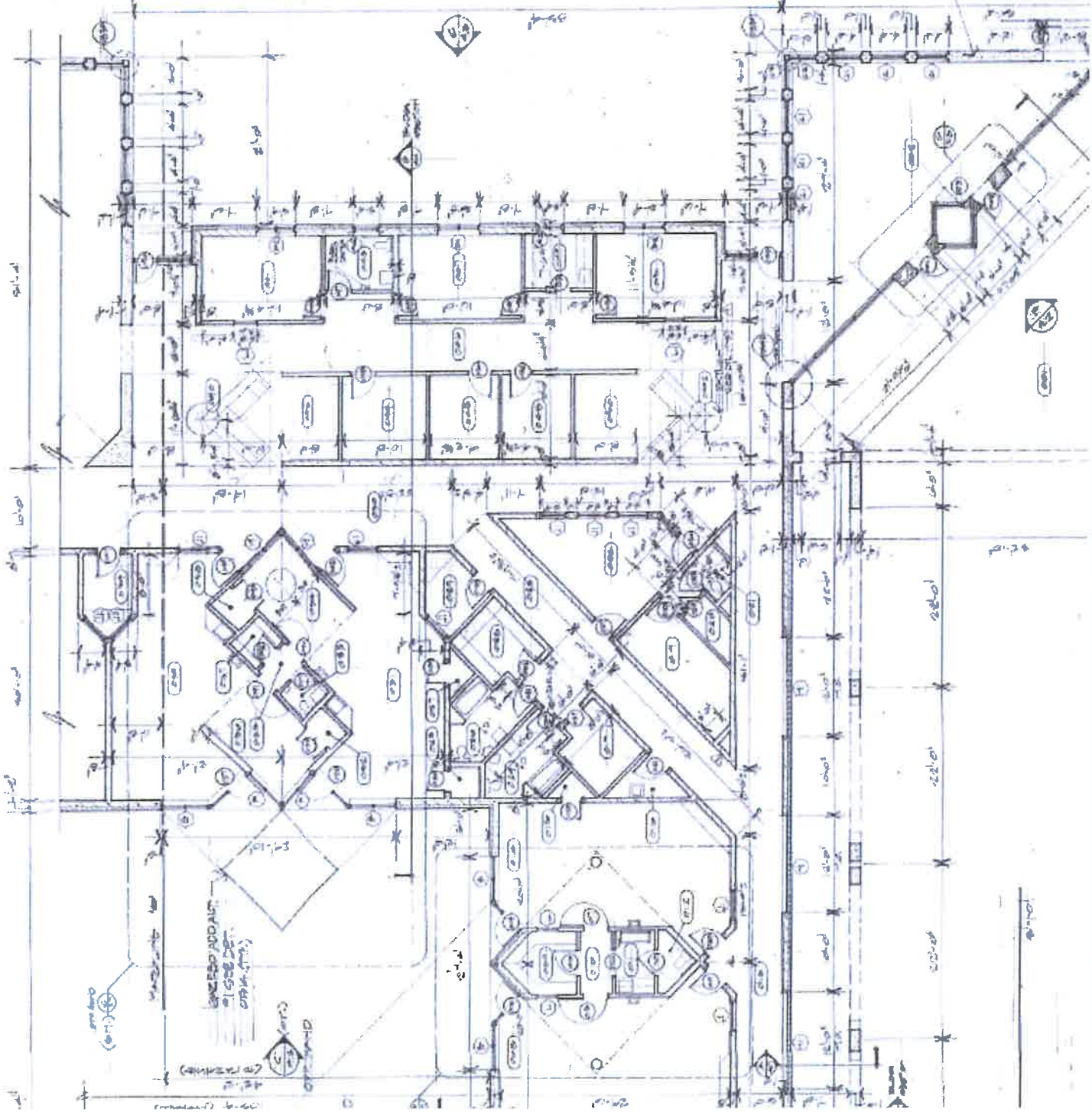


Weeks 1-
Dates: TE
Area insic



KEY PLAN

- 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE KENTUCKY BUILDING CODE AND ALL APPLICABLE LOCAL ORDINANCES.
- 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
- 3. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ARCHITECT AND/OR ENGINEER.
- 4. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
- 5. ALL UTILITIES SHALL BE PROTECTED AND MARKED PRIOR TO ANY EXCAVATION WORK.

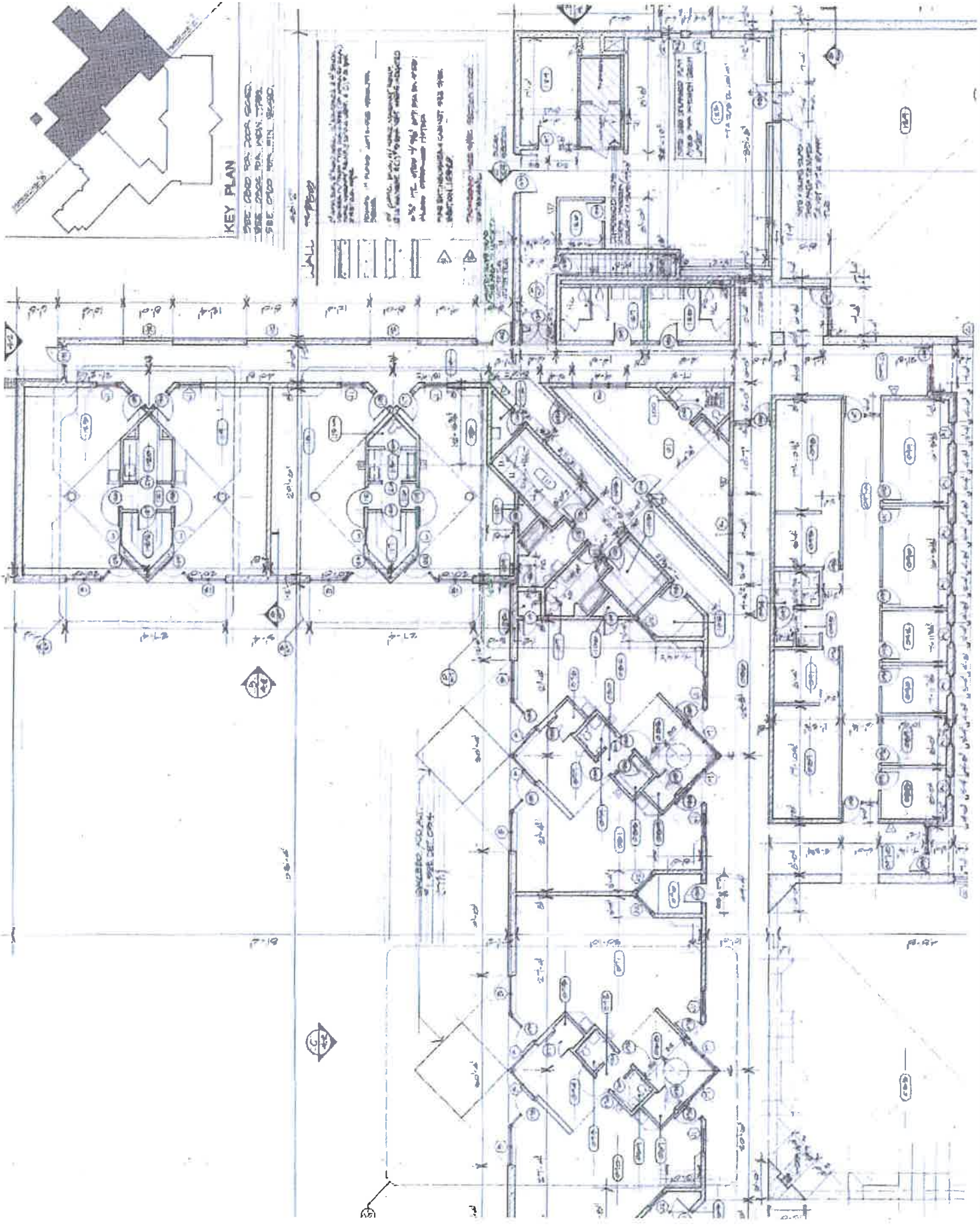


400' 0" x 100' 0" (approx.)





Weeks 4-7
Dates: TBC
Area inside

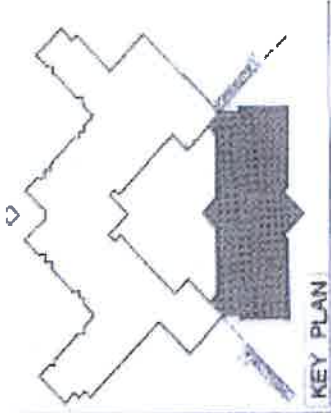
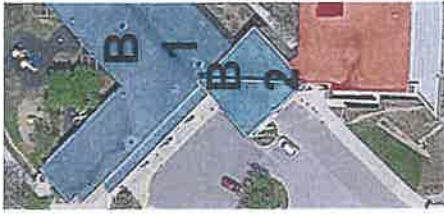


KEY PLAN

SEE PLAN FOR WALL LOCATION
SEE PLAN FOR WALL LOCATION
SEE PLAN FOR WALL LOCATION

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SECTION 100-100

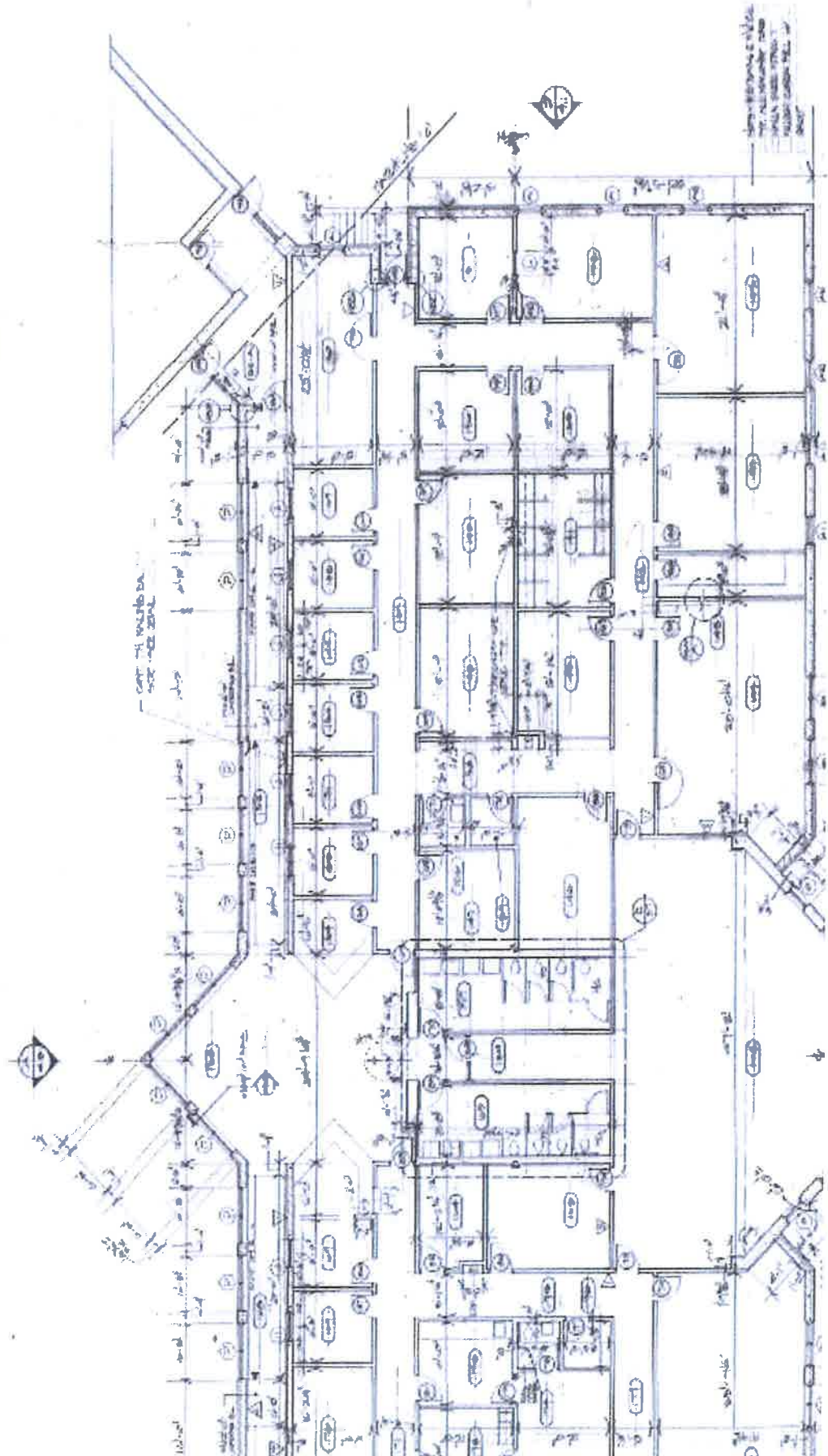
SCHEDULE POINT
SEE PLAN



KEY PLAN

THIS AREA IS THE PROJECT AREA
 THE OTHER AREAS ARE NOT TO BE CONSIDERED
 FOR THIS PROJECT

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE KENTUCKY BUILDING CODE AND ALL APPLICABLE LOCAL ORDINANCES.
 2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE KENTUCKY MECHANICAL, ELECTRICAL AND PLUMBING CODES AND ALL APPLICABLE LOCAL ORDINANCES.
 3. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE KENTUCKY STRUCTURAL CODE AND ALL APPLICABLE LOCAL ORDINANCES.
 4. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE KENTUCKY FIRE AND LIFE SAFETY CODE AND ALL APPLICABLE LOCAL ORDINANCES.
 5. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE KENTUCKY ENERGY CODE AND ALL APPLICABLE LOCAL ORDINANCES.
 6. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE KENTUCKY ENVIRONMENTAL CODE AND ALL APPLICABLE LOCAL ORDINANCES.
 7. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE KENTUCKY TRANSPORTATION CODE AND ALL APPLICABLE LOCAL ORDINANCES.
 8. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE KENTUCKY COMMUNITY DEVELOPMENT CODE AND ALL APPLICABLE LOCAL ORDINANCES.
 9. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE KENTUCKY HEALTH CARE CODE AND ALL APPLICABLE LOCAL ORDINANCES.
 10. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE KENTUCKY EDUCATION CODE AND ALL APPLICABLE LOCAL ORDINANCES.



Weeks 7-10
 Dates: TBD
 Area inside f

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PART IV

GENERAL CONDITIONS

1. DEFINITIONS

Wherever used in these General Conditions or the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof.

1.1 Addenda

Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bid Documents or the Contract Documents.

1.2 Agreement

The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

1.3 Application for Payment

The form accepted by CONSULTANT which is to be used by CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

1.4 Bid

The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

1.5 Bidder

An individual, partnership, or corporation, who submit a Bid for a prime contract with the OWNER, for the Work described in the proposed Contract Documents.

1.6 Bonds

Bid, performance and payment bonds and other instruments of security.

1.7 Calendar Day

A calendar day of twenty-four hours measured from midnight to the next midnight shall constitute a day.

1.8 Change Order

A document recommended by CONSULTANT, which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.

- 1.9 Contract Documents**
The Advertisement for Bidders, Information for Bidders, Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR'S Bid (including documentation accompanying the Bid and any post-bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Special Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all amendments, modifications and supplements.
- 1.10 Contract Unit Price**
The monies payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement. Unit Prices are to be firm for the term of this Contract.
- 1.11 Contract Time**
The number of consecutive calendar days between the date of issuance of the Notice to Proceed and the contract completion date.
- 1.12 CONTRACTOR**
The person, firm or corporation with whom OWNER has entered into the Agreement.
- 1.13 Defective**
An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to CONSULTANT'S recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER).
- 1.14 Drawings**
The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by CONSULTANT and are referred to in the Contract Documents.
- 1.15 Effective Date of the Agreement**
The date indicated in the Agreement on which it becomes effective.
- 1.16 CONSULTANT**
The Lexington-Fayette Urban County Government or its authorized representative.
- 1.17 Field Order**
A documented order issued by CONSULTANT which orders minor changes in the Work, but which does not involve a change in the Contract Price or the Contract Time.

1.18 Giving Notice

Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

1.19 Laws and Regulations

Laws, rules, regulations, ordinances, codes and/or orders.

1.20 Notice of Award

The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

1.21 Notice to Proceed

A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents.

1.22 OWNER

The Lexington-Fayette Urban County Government.

1.23 Partial Utilization

Placing a portion of the Work in service for the purpose for which it is intended (or related purpose) before reaching Completion for all the Work.

1.24 Project

The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

1.25 Inspector

The authorized representative who is assigned to the site or any part thereof.

1.26 Shop Drawings

All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

1.27 Specifications

Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and

workmanship as applied to the Work and certain administrative details applicable thereto.

1.28 Standard Specifications

The "Standard Specifications for Road and Bridge Construction", Transportation Cabinet, Department of Highways, Commonwealth of Kentucky, current edition. MUTCD shall refer to the "Manual of Uniform Traffic Control Devices.

1.29 Subcontractor

An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

1.30 Special Conditions

The part of the Contract Documents which amends or supplements these General Conditions.

1.31 Supplier

A manufacturer, fabricator, supplier, distributor, materialman or vendor.

1.32 Underground Facilities

All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

1.33 Unit Price Work

An amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

1.34 Work

The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

1.35 Time Period

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

2. PRELIMINARY MATTERS

2.1 Delivery of Bonds

When the CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER, such Bonds, Insurance Certificate, and Power of Attorney as CONTRACTOR may be required to furnish.

2.2 Copies of Documents

Owner shall furnish to CONTRACTOR up to three copies (unless otherwise specified in the Special Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

2.3 Commencement of Contract Time; Notice to Proceed

The Contract Time will commence to run on the day specified in the Notice to Proceed.

2.4 Starting the Project

CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

2.5 Before Starting Construction

Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to CONSULTANT any conflict, error or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from CONSULTANT before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or CONSULTANT for failure to report any conflict, error or discrepancy in the Contract Documents, unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

2.6 Submittal of Schedules

Within ten days after the effective date of the Agreement (unless otherwise specified) CONTRACTOR shall submit to CONSULTANT for review:

2.6.1 an estimated progress schedule indicating the starting and completion dates of the various stages of the Work;

2.6.2 a preliminary schedule of Shop Drawing submissions; and

2.6.3 a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into costs per labor and materials by specification

section to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by CONTRACTOR at the time of submission. Schedule of values shall be submitted on AIA G702/703 forms, or approved equal.

2.7 Preconstruction Conference

Before CONTRACTOR starts the Work at the proposed site, a conference attended by CONTRACTOR, CONSULTANT, EEO-Affirmative Action Officer, and other appropriate parties will be held to discuss the following issues: (1) The scheduling of the Work to be completed; (2) The procedures for handling shop drawings and other submittals; (3) The processing of applications for payment; (4) The establishment of an understanding among the involved parties in regard to the proposed project; (5) The establishment of procedures for effectively implementing the LFUCG's 10% minimum DBE goals; and (6) Requirement for Mechanic's Lien on Partial Applications for Payment.

2.8 Finalizing Schedules

At least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, CONSULTANT and others as appropriate will be held to finalize the schedules submitted in accordance with paragraph 2.6. The finalized progress schedule will be acceptable to CONSULTANT as providing orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on CONSULTANT responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility thereof. The finalized schedule of Shop Drawing submissions will be acceptable to CONSULTANT as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to CONSULTANT as to form and substance.

3. CONTRACT DOCUMENTS: INTENT, CONFLICTS, AMENDING AND REUSE

3.1 General

The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.2 Intent

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used

to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or CONSULTANT, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CONSULTANT, or any of CONSULTANT'S consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 8.12.3 or 8.12.4. Clarifications and interpretations of the Contract Documents shall be issued by CONSULTANT as provided in paragraph 8.4.

3.3 Conflicts

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to CONSULTANT in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from CONSULTANT; however, CONTRACTOR shall not be liable to OWNER or CONSULTANT for failure to report any conflict, error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

In resolving such conflicts, errors and discrepancies, the documents shall be given precedence in the following order:

1. Agreement
2. Field and Change Orders
3. Addenda
4. Special Conditions
5. Instruction to Bidders
6. General Conditions
7. Specifications and Drawings

Figure dimension on drawings shall govern over scale dimensions and detailed Drawings shall govern over general Drawings.

3.4 Amending and Supplementing Contract Documents

The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof by means of a Change Order or a Field Order. Contract Price and Contract Time may only be changed by a Change Order.

3.5 Reuse of Documents

Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of CONSULTANT; and they shall not reuse any of them on extensions of the Project or any other project without written consent of OWNER and CONSULTANT and specific written verification or adaptation by CONSULTANT.

4. AVAILABILITY OF LANDS; PHYSICAL CONDITIONS, REFERENCE POINTS

4.1 Availability of Lands

OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in OWNER'S furnishing these lands, rights-of-way or easements entitles CONTRACTOR to an extension of the Contract Time, CONTRACTOR may make a claim therefor as provided in Article 11. CONSULTANT shall determine if the claim is legitimate or not. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 Physical Conditions

4.2.1 Explorations and Reports

Reference is made to the Special Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by CONSULTANT in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon non-technical data, interpretations or opinions contained therein or for the completeness thereof for CONTRACTOR'S purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site.

4.2.2 Existing Structures

Reference is made to the Special Conditions for identification of those drawings of physical conditions in or relating to existing surface and

subsurface structures (except Underground Facilities referred to in paragraph 4.3 which are at or contiguous to the site that have been utilized by CONSULTANT in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for CONTRACTOR'S purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures.

4.2.3 Report of Differing Conditions

If CONTRACTOR believes that:

4.2.3.1 any technical data on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is inaccurate, or

4.2.3.2 any physical conditions uncovered or revealed at the site differ materially from that indicated, reflected or referred to in the Contract Documents,

CONTRACTOR shall, promptly after becoming aware thereof and before performing and WORK in connection therewith (except in an emergency) notify OWNER and CONSULTANT in writing about the inaccuracy or difference.

4.2.4 CONSULTANT'S Review

CONSULTANT will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise CONTRACTOR of CONSULTANT'S findings and conclusions.

4.2.5 Possible Document Change

If CONSULTANT concludes that there is a material error in the Contract Documents or that because of newly discovered conditions a change in the Contract Documents is required, a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

4.2.6 Possible Price and Time Adjustments

In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference.

4.3 Physical Conditions-Underground Facilities

4.3.1 Shown or Indicated

The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is

based on information and data furnished to OWNER or CONSULTANT by the owners of such underground facilities or by others. Unless it is otherwise expressly provided in the Special Conditions:

4.3.1.1 OWNER and CONSULTANT shall not be responsible for the accuracy or completeness of any such information or data; and,

4.2.1.2 CONTRACTOR shall have full responsibility for reviewing and checking all such information and data; for locating all underground facilities shown or indicated in the Contract Documents; for coordination of the Work with the owners of such underground facilities during construction; and for the safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

4.3.2 Not Shown or Indicated

If an underground facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency), identify the owner of such Underground Facility and give written notice thereof to that owner and to OWNER and CONSULTANT. CONSULTANT will promptly review the underground facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such underground facility. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any underground facility that was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of.

4.4 Reference Points

OWNER shall provide engineering surveys to establish reference points for construction which in CONSULTANT'S judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to CONSULTANT whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by a Registered Land Surveyor.

5. CONTRACTOR'S RESPONSIBILITIES

5.1 Supervision

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall assure that all CONTRACTOR personnel (including subcontractors, etc.) conduct themselves in a courteous and respectful manner toward the CONSULTANT and the general public. CONTRACTOR shall keep at the Project Site during the progress of the Work a competent project manager/superintendent and all necessary assistants, all of whom shall be satisfactory to OWNER. OWNER reserves the right to reject CONTRACTOR'S construction superintendent and project management personnel if they are unsatisfactory to OWNER and upon such rejection CONTRACTOR shall designate and provide competent successors. Failure to comply with this condition of the Contract will result in immediate suspension of the Work. Following a review by the Commissioner of Public Works, the Contract may be terminated (see GC section 14). CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

5.2 Superintendence

CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and CONSULTANT except under extraordinary circumstances. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

5.3 Labor

CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. OWNER reserves the right to require CONTRACTOR to remove from the Project any of its personnel, or subcontractor's personnel for violating LFUCG Policies, Rules or Regulations. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER'S written consent given after prior written notice to CONSULTANT.

5.4 Start-Up and Completion of Work

Unless otherwise specified, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

5.5 Materials and Equipment

All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by CONSULTANT, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to CONSULTANT, or any of CONSULTANT'S consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 8.12.3 or 8.12.4.

5.5.1 Not Clearly Specified or Indicated

In all instances where materials specified are obtainable in different sizes, weights, trade grades, qualities or finishes, etc., whose weights, trade grades, qualities or finishes, etc., are not clearly specified or indicated on the Drawings, the CONTRACTOR shall notify the CONSULTANT of all such instances at least five (5) days in advance of receiving the proposals. The CONSULTANT will then determine which size, weight, trade grade, quality, finish, etc., is required.

5.5.2 Coordination of Work

The CONTRACTOR shall see that for his own Work and for the work of each subcontractor, proper templates and patterns necessary for the coordination of the various parts of the Work are prepared. The CONTRACTOR shall furnish or require the Subcontractor to furnish such duplicates as will enable the Subcontractors to fit together and execute fully their respective portions of the Work.

5.6 Adjusting Progress Schedule

CONTRACTOR shall submit to CONSULTANT for acceptance (to the extent indicated in paragraph 2.8) adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the Contract Documents applicable thereto.

5.7 Substitutes or “Or-Equal” Items

5.7.1 General

Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by OWNER/CONSULTANT if sufficient information is submitted by CONTRACTOR to allow OWNER/CONSULTANT to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by OWNER/CONSULTANT will include the following. Requests for review of substitute items of material and equipment will not be accepted by OWNER/CONSULTANT from anyone, other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to OWNER/CONSULTANT for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR’S achievement of completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by OWNER/CONSULTANT in evaluating the proposed substitute. OWNER/CONSULTANT may require CONTRACTOR to furnish at CONTRACTOR’S expense additional data about the proposed substitute.

5.7.2 Substitutes

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to OWNER/CONSULTANT, if CONTRACTOR submits sufficient information to allow OWNER/CONSULTANT to determine that the substitute proposed is equivalent to that indicated or required by the Contract

Documents. The procedure for review by OWNER/CONSULTANT will be similar to that provided in paragraph 5.7.1 as applied by OWNER/CONSULTANT.

5.7.3 OWNER/CONSULTANT'S Approval

OWNER/CONSULTANT will be allowed a reasonable time within which to evaluate each proposed substitute. OWNER/CONSULTANT will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without OWNER/CONSULTANT'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute. OWNER/CONSULTANT will record time required by OWNER/CONSULTANT and OWNER/CONSULTANT'S consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Contract Documents occasioned thereby. Whether or not OWNER/CONSULTANT accepts a proposed substitute, CONTRACTOR shall reimburse OWNER for the charges of OWNER/CONSULTANT and OWNER/CONSULTANT'S consultants for evaluating each proposed substitute.

5.8 Subcontractors, Suppliers, and Others

5.8.1 Acceptable to CONSULTANT

CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and CONSULTANT as indicated in paragraph 5.8.2), whether initially or as a substitute, against whom OWNER or CONSULTANT may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

5.8.2 Objection After Due Investigation

If the Contract Documents require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and CONSULTANT and if CONTRACTOR has submitted a list thereof, OWNER'S or CONSULTANT'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute. No acceptance by

OWNER or CONSULTANT of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or CONSULTANT to reject defective Work.

5.8.3 Contractor Responsible for Acts of Subcontractors

The CONTRACTOR shall perform on the site, and with its own organization, work equivalent to at least fifty (50) percent of the total amount of Work to be performed under the Contract. This percentage may be reduced by a supplemental agreement to this Contract if, during performing the Work, the CONTRACTOR requests a reduction and the Urban County project manager determines that the reduction would be to the advantage of the Urban County Government.

The CONTRACTOR shall, at the time he submits his proposal for the Contract, notify the OWNER in writing of the names of Subcontractors proposed for the Work. He shall not employ any Subcontractor without the prior written approval of the OWNER.

CONTRACTOR shall be fully responsible to OWNER and CONSULTANT for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR'S own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between OWNER or CONSULTANT and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or CONSULTANT to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

5.8.4 Division of Specifications

The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

5.8.5 Agreement Between Contractor and Subcontractors

All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and CONSULTANT.

5.8.6 Statements and Comments by CONTRACTOR

Neither the CONTRACTOR, his employees, nor his subcontractors shall at any time make any statement or comment as

to the project scope, nature, intention, design, or construction method to any third party or parties without the explicit written consent of the OWNER.

Any third party requesting such information shall be referred to the OWNER or his representative.

Should there be any change from the original intent of the project as a result of any statement or comment by the contractor, his employees or subcontractors, contractor shall be held liable for any change in the scope, nature, design, or construction method and shall bear the full cost for the previously mentioned changes.

5.9 Patent Fees and Royalties

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

5.10 Permits

Unless otherwise provided in the Special conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or if there are no Bids on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

5.11 Laws and Regulations

5.11.1 CONTRACTOR to Comply

CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor CONSULTANT shall be responsible for monitoring CONTRACTOR'S compliance with any Laws and Regulations.

5.11.2 Specifications and Drawings at Variance

If CONTRACTOR observes that the Specifications or Drawings are at variance with any Laws or Regulations, CONTRACTOR shall give CONSULTANT prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 3.4. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Laws, or Regulations, and without such notice to CONSULTANT, CONTRACTOR shall bear all costs arising therefrom; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with such Laws and Regulations.

Any party, firm or individual submitting a proposal pursuant to invitation must have paid all taxes owed to the Lexington-Fayette Urban County Government at the time the proposal is submitted, and must maintain a "current" status in regard to those taxes throughout the Contract. If applicable, business must be licensed in Fayette County.

5.12 Taxes

CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work. Any party, firm or individual submitting a proposal pursuant to invitation must have paid all taxes owed to the Lexington-Fayette Urban County Government at the time the proposal is submitted, and must maintain a "current" status in regard to those taxes throughout the Contract. If applicable, business must be licensed in Fayette County.

5.13 Use of Premises

5.13.1 Project Site

CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the staging areas or work site areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such

land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against OWNER or CONSULTANT by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER and CONSULTANT harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER or CONSULTANT to the extent based on a claim arising out of CONTRACTOR'S performance of the Work.

5.13.2 Clean UP

During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

5.13.1 Loading of Structures

CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

5.14 **Record Drawings**

CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to CONSULTANT for reference. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to CONSULTANT for OWNER.

5.15 **Shop Drawings and Samples**

5.15.1 Shop Drawing Submittals

After checking and verifying all field measurements and after complying

with applicable procedures specified, CONTRACTOR shall submit to CONSULTANT for review and approval in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.8), or for other appropriate action if so indicated in the Special Conditions, five copies (unless otherwise specified) of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as CONSULTANT may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable CONSULTANT to review the information as required.

5.15.2 Sample Submittals

CONTRACTOR shall also submit to CONSULTANT for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

5.15.3 Review by CONTRACTOR

Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

5.15.4 Notice of Variation

At the time of each submission, CONTRACTOR shall give CONSULTANT specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to CONSULTANT for review and approval of each such variation.

5.15.5 CONSULTANT'S Approval

CONSULTANT will review and approve with reasonable promptness Shop Drawings and samples, but CONSULTANT'S review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or

procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by CONSULTANT, and shall return the required number of corrected copies of Shop Drawings and submit, as required, new samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by CONSULTANT on previous submittals.

5.15.6 Responsibility for Errors and Omissions

CONSULTANT'S review and approval of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called CONSULTANT'S attention to each such variation at the time of submission as required by paragraph 5.15.4 and CONSULTANT has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any approval by CONSULTANT relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 5.15.3.

5.15.7 Cost of Related Work

Where a Shop or sample is required by the Specifications, any related Work performed prior to CONSULTANT'S review and approval of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

5.16 Continuing the Work

CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolutions of any disputes or disagreements, except as permitted by paragraph 14.5 or as CONTRACTOR and OWNER may otherwise agree in writing.

5.17 Erosion and Sediment Control

5.17.1 General Environmental Requirements

The CONTRACTOR and Subcontractors performing work on projects on behalf of the OWNER shall comply with all applicable federal, state, and local environmental regulations and all requirements and conditions set forth in "special" permits including but not limited to Corp of Engineers 404 permits, 401 Water Quality Certifications, Stream Crossing and Floodplain Encroachment Permits.

Any fines or penalties resulting from the failure to comply with the terms of the federal, state or local permits or perform necessary corrective action are solely the obligation of the CONTRACTOR.

5.17.2 Stormwater Pollution Prevention

A. The CONTRACTOR shall exercise due care to prevent or minimize any damage to any stream or wetland from pollution by debris, sediment or other material. The operation of equipment and/or materials in a jurisdictional wetland is expressly prohibited. Water that has been used for washing or processing, or that contains oils, sediments or other pollutants shall not be discharged from the job site. Such waters shall be collected and properly disposed of by the CONTRACTOR in accordance with applicable local, state and federal law.

B. The CONTRACTOR is solely responsible for securing all required state and local permits associated with stormwater discharges from the project including, but not necessarily limited to the KY Notice of Intent to Disturb (NOI) for Coverage of Storm Water Discharges Associated with Construction Activities under the KPDES Storm Water General Permit KYR100000 and the LFUCG, Land Disturbance Permit. Permit application preparation and all required documentation are the responsibility of the CONTRACTOR. The CONTRACTOR is solely responsible for maintaining compliance with the stormwater pollution prevention plan or erosion and sediment control plan and ensuring the following:

- a. That the Stormwater Pollution Prevention Plan (SWPPP) or erosion control plan is current and available for review on site;
- b. That any and all stormwater inspection reports required by the permit are conducted by qualified personnel and are available for review onsite; and
- c. That all best management practices (BMPs) are adequately maintained and effective at controlling erosion and preventing sediment from leaving the site.

C. The CONTRACTOR shall provide the necessary equipment and personnel to perform any and all emergency measures that may be required to contain any spillage or leakage and to remove materials, soils or liquids that become contaminated. The collected spill material shall be properly disposed at the CONTRACTOR's expense.

D. Upon completion of the work and with the concurrence of the OWNER, the CONTRACTOR must file a Notice of Termination (NOT) of Coverage Under the KPDES General Permit for Storm Water Discharges Associated with Construction Activity with the appropriate local and state authorities.

E. Any fines or penalties resulting from the failure to comply with the terms of the state or local stormwater permits or perform necessary corrective action are solely the obligation of the CONTRACTOR.

6. OTHER WORK

6.1 Related Work at Site

OWNER may perform other work related to the Project at the site by OWNER'S own forces, have other work performed by utility owners or let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work; and, if such performance will involve additional expense to CONTRACTOR or requires additional time, a Change Order to the Contract will be negotiated.

6.2 Other Contractors or Utility Owners

CONTRACTOR shall afford each utility owner and other contractor who is a party to such a direct contract (or OWNER, if OWNER is performing the additional work with OWNER'S employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of CONSULTANT and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

6.3 Delays Caused by Others

If any part of CONTRACTOR'S Work depends for proper execution or results upon the work of any such other contractor or utility owner (or OWNER), CONTRACTOR shall inspect and promptly report to CONSULTANT in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. CONTRACTOR'S failure so to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR'S Work except for latent or non-apparent defects and deficiencies in the other work.

6.4 Coordination

If OWNER contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Special Conditions, and the specific matters to be covered by such authority and

responsibility will be itemized, and the extent of such authority and responsibilities will be provided, in the Special Conditions.

7. OWNER'S RESPONSIBILITIES

7.1 Communications

OWNER shall issue all communications to CONTRACTOR through CONSULTANT.

7.2 Data and Payments

OWNER shall furnish the data required of OWNER under the Contract Documents promptly after they are due.

7.3 Lands, Easements, and Surveys

OWNER'S duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER'S identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by CONSULTANT in preparing the Drawings and Specifications.

7.4 Change Orders

OWNER is obligated to execute Change Orders as indicated in paragraph 9.4.

7.5 Inspections, Tests and Approvals

OWNER'S responsibility in respect to certain inspections, tests and approvals is set forth in paragraph 13.3.

7.6 Stop or Suspend Work

In connection with OWNER'S right to stop Work or suspend Work, see paragraph 12.4 and 14.1 Paragraph 14.2 deals with OWNER'S rights to terminate services of CONTRACTOR under certain circumstances.

8. CONSULTANT'S STATUS DURING CONSTRUCTION

8.1 OWNER'S Representative

CONSULTANT will be OWNER'S representative during the construction period. The duties and responsibilities and the limitations of authority of CONSULTANT as OWNER'S representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and CONSULTANT.

8.2 Visits to Site

CONSULTANT will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. CONSULTANT will not be required to make exhaustive or

continuous on-site inspections to check the quality or quantity of the Work. CONSULTANT'S efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations, CONSULTANT will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.

8.3 Project Representation

CONSULTANT will provide an Inspector to assist CONSULTANT in observing the performance of the Work. If OWNER designates another agent to represent OWNER at the site who is not CONSULTANT'S agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Special Conditions.

8.4 Clarifications and Interpretations

CONSULTANT will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as CONSULTANT may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

8.5 Authorized Variations in Work

CONSULTANT may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order.

8.6 Rejecting Defective Work

CONSULTANT will have authority to disapprove or reject Work which CONSULTANT believes to be defective, and will also have authority to require special inspection or testing of the Work as provided in paragraph 12.3, whether or not the Work is fabricated, installed or completed.

8.7 Shop Drawings

In connection with CONSULTANT'S responsibility for Shop Drawings and samples, see paragraphs 5.15.1 through 5.16 inclusive.

8.8 Change Orders

In connection with CONSULTANT'S responsibilities as to Change Orders, see Articles 10, 11 and 12.

8.9 Payments

In connection with CONSULTANT'S responsibilities with respect to Applications for Payment, etc., see Article 13.

8.10 Determinations for Unit Prices

CONSULTANT will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR.

CONSULTANT will review with CONTRACTOR CONSULTANT'S preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

8.11 Decision on Disputes

CONSULTANT will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 10 and 11 in respect of changes in the Contract Price or Contract Time will be referred initially to CONSULTANT in writing with a request for a formal decision in accordance with this paragraph, which CONSULTANT will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered to CONSULTANT promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to CONSULTANT within sixty days after such occurrence unless CONSULTANT allows an additional period of time to ascertain more accurate data in support of the claim.

8.12 Limitations on CONSULTANT's Responsibilities

8.12.1 CONTRACTOR, Supplier, or Surety

Neither CONSULTANTS authority to act under this Article 8 or elsewhere in the Contract Documents nor any decision made by CONSULTANT in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of CONSULTANT to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

8.12.2 To Evaluate the Work

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives or like "effect" or "import" are used to describe a requirement, direction, review or judgment of CONSULTANT as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign CONSULTANT any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 8.12.3 or 8.12.4.

8.12.3 CONTRACTOR'S Means, Methods, Etc.

CONSULTANT will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and CONSULTANT will not be responsible for CONTRACTOR'S failure to perform or furnish the Work in accordance with the Contract Documents.

8.12.4 Acts of Omissions of CONTRACTOR

CONSULTANT will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

9. CHANGES IN THE WORK

9.1 OWNER May Order Change

Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Change Order. Upon receipt of such notice, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

9.2 Claims

Claims for an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Change Order will be settled as provided for in Article 10 or Article 11.

9.3 Work Not in Contract Documents

CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraph 3.4, except in the case of an emergency and except in the case of uncovering Work as provided in paragraph 12.3.4.

9.4 Change Orders

OWNER and CONTRACTOR shall execute appropriate Change Orders covering:

9.4.1 changes in the Work which are ordered by OWNER pursuant to paragraph 9.1, are required because of acceptance of defective Work under paragraph 12.7 or corrective defective Work under paragraph 12.8, or are agreed to by the parties;

9.4.2 changes in the Contract Price or Contract Time which are agreed to by the parties; and

9.4.3 changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by CONSULTANT pursuant to paragraph 8.11; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and REGULATIONS, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 5.16.

9.5 Notice of Change

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10. CHANGE OF CONTRACT PRICE

10.1 Total Compensation

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

10.2 Claim for Increase or Decrease in Price

The Contract Price may only be changed by a Change Order. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the CONTRACTOR to the CONSULTANT promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after such occurrence (unless CONSULTANT allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by CONTRACTOR'S written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the CONTRACTOR is entitled as a result of the occurrence of said event.

10.3 Value of Work

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

10.3.1 Unit Prices

Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of

the items involved (subject to the provisions of paragraphs 10.9.1. through 10.9.3, inclusive).

10.3.2 Lump Sum

By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 10.6.2.1).

10.3.3 Cost Plus Fee

On the basis of the Cost of the Work (determined as provided in paragraphs 10.4 and 10.5) plus a CONTRACTOR'S fee for overhead and profit (determined as provided in paragraphs 10.6 and 10.7).

10.4 Cost of the Work

The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project; shall include only the following items; and shall not include any of the costs itemized in paragraph 10.5:

10.4.1 Payroll Costs

Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

10.4.2 Materials and Equipment Costs

Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

10.4.3 Subcontractor Costs

Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of CONSULTANT, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR'S Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

10.4.4 Special Consultant Costs

Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

10.4.5 Supplemental Costs

10.4.5.1 The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the Work.

10.4.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

10.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of CONSULTANT, and the costs of transportation, loading, unloading, installation, dismantling and removal shall be in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

10.4.5.4 Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

10.4.5.5 Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

10.4.5.6 Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR'S fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid a fee proportionate to that stated in paragraph 10.6.2 for services.

10.4.5.7 The cost of utilities, fuel and sanitary facilities at the site.

10.4.5.8 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

10.4.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by OWNER.

10.5 Not to Be Included in Cost of the Work

The term Cost of the Work shall not include any of the following:

10.5.1 Costs of Officers and Executives

Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general

managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR'S principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.4.1 or specifically covered by paragraph 10.4.4 - all of which are to be considered administrative costs covered by the CONTRACTOR'S fee.

10.5.2 Principal Office

Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.

10.5.3 Capital Expense

Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.

10.5.4 Bonds and Insurance

Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 10.4.5.9 above).

10.5.5 Costs Due to Negligence

Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

10.5.6 Other Costs

Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.4.

10.6 Contractor's Fee

The CONTRACTOR'S Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

10.6.1 a mutually acceptable fixed fee; or if none can be agreed upon,

10.6.2 a fee based on the following percentages of the various portions of the Cost of the Work:

10.6.2.1 for costs incurred under paragraphs 10.4.1 and 10.4.2, the CONTRACTOR'S fee shall be fifteen percent;

10.6.2.2 for costs incurred under paragraph 10.4.3, the CONTRACTOR'S fee shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all Subcontractors shall be fifteen percent;

10.6.2.3 no fee shall be payable on the basis of costs itemized under paragraphs 10.4.4, 10.4.5 and 10.5;

10.6.2.4 the amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR'S Fee by an amount equal to ten percent of the net decrease; and

10.6.2.5 when both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S fee shall be computed on the basis of the net change in accordance with paragraphs 10.6.2.1 through 10.6.2.4, inclusive.

10.7 Itemized Cost Breakdown

Whenever the cost of any Work is to be determined pursuant to paragraph 10.4 or 10.5, CONTRACTOR will submit in form acceptable to CONSULTANT an itemized cost breakdown together with supporting data.

10.8 Cash Allowances

It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to CONSULTANT, CONTRACTOR agrees that:

10.8.1 Materials and Equipment

The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

10.8.2 Other Costs

CONTRACTOR'S costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

10.8.3 Change Order

Prior to final payment, an appropriate Change Order will be issued as recommended by CONSULTANT to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.9 Unit Price Work

10.9.1 General

Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by CONSULTANT in accordance with Paragraph 8.10.

10.9.2 Overhead and Profit

Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item.

10.9.3 Claim for Increase in Unit Price

Where the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of Work and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 10.

11. CHANGE OF CONTRACT TIME

11.1 Change Order

The Contract Time may only be changed by a Change Order. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered to CONSULTANT promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless CONSULTANT allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by CONSULTANT in accordance with paragraph 8.11. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 11.1.

11.2 Justification for Time Extensions

The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if a claim is made therefore as provided in paragraph 11.1. Such delays shall include, but not be limited to, acts or neglect by OWNER or others performing additional work as contemplated by Article 6, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

11.3 Time Limits

All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 11 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) for delay by either party.

12. WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.1 Warranty and Guarantee

CONTRACTOR warrants and guarantees to OWNER and CONSULTANT that all Work will be in accordance with the Contract Documents and will not be defective. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 12.

12.2 Access to Work

CONSULTANT and CONSULTANT'S representatives, other representatives of OWNER, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

12.3 Tests and Inspections

12.3.1 Timely Notice

CONTRACTOR shall give CONSULTANT timely notice of readiness of the Work for all required inspections, tests or approvals.

12.3.2 Requirements and Responsibilities

The CONSULTANT may require such inspection and testing during the course of the Work as he/she deems necessary to ascertain and assure the integrity and acceptable quality of the materials incorporated and the work performed. Inspection presence may be either full-time or intermittent, and neither the presence nor absence at any time of the CONSULTANT or the INSPECTOR shall relieve the CONTRACTOR of sole responsibility for the acceptability and integrity of the Work or any part thereof.

The costs of sampling, testing, and inspection on-site to ascertain acceptability of the Work and materials will be borne by the OWNER except as otherwise provided. The OWNER will select a testing laboratory to perform such sampling and testing. Sampling and/or testing required by the CONTRACTOR or necessitated by failure of Work or materials to meet the above acceptability test shall be at the expense of the CONTRACTOR.

Inspection services may be performed by the employees of the OWNER or by others selected or designated by the OWNER or the CONSULTANT.

Sampling and/or testing required for manufacturing quality and/or process control, for certification that raw mineral materials or manufactured products are the quality specified in the contract, or to assure the acceptability for incorporation into the Work shall be borne by the CONTRACTOR or the material supplier.

Cost for inspection, sampling, testing, and approvals required by the laws or regulations of any public body having competent jurisdiction shall be borne by the CONTRACTOR or the material supplier.

Sampling and testing will be in accord with pertinent codes and regulations and with appropriate standards of the American Society of Testing Materials or other specified standards.

12.3.3 On-Site Construction Test and Other Testing

All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by CONSULTANT if so specified).

12.3.4 Covered Work

If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of CONSULTANT, it must, if requested by CONSULTANT, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given CONSULTANT timely notice of CONTRACTOR'S intention to cover the same and CONSULTANT has not acted with reasonable promptness in response to such notice.

12.3.5 CONTRACTOR'S Obligation

Neither observations by CONSULTANT nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR'S obligations to perform the Work in accordance with the Contract Documents.

12.4 **OWNER May Stop the Work**

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party.

12.5 **Correction or Removal of Defective Work**

If required by CONSULTANT, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by CONSULTANT, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

12.6 **One Year Correction Period**

If within one year after the date of Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER'S written instructions, either correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement

(including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service before Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Change Order.

12.7 Acceptance of Defective Work

If, instead of requiring correction or removal and replacement of defective Work, OWNER prefers to accept it, OWNER may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to OWNER'S evaluation of and determination to accept such defective Work (such costs to be approved by CONSULTANT as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals).

12.8 OWNER May Correct Defective Work

If CONTRACTOR fails within a reasonable time after written notice of CONSULTANT to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by CONSULTANT in accordance with paragraph 12.5, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER'S representatives, agents and employees such access to the site as may be necessary to enable OWNER to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of OWNER in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by CONSULTANT, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER'S rights and remedies hereunder.

13. PAYMENTS TO CONTRACTOR AND COMPLETION

13.1 Schedule of Values

The schedule of values established as provided in paragraph 2.8 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to CONSULTANT. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.2 Application for Progress Payment

At least ten days before each progress payment is scheduled (but not more often than once a month), CONTRACTOR shall submit to CONSULTANT for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER'S interest therein, all of which will be satisfactory to OWNER. OWNER shall, within thirty (30) calendar days of presentation to him of an approved Application for Payment, pay CONTRACTOR the amount approved by CONSULTANT. Monthly progress payments shall be ninety (90) percent of the sum obtained by applying the respective bid unit prices to the approved estimated quantities of work completed by the Contractor during the preceding month. The remaining ten (10) percent will be held by the Owner, as retainage. At such time as the CONSULTANT deems appropriate - based on the quality of work performed, progress of cleanup, and other pertinent factors - the rate of retainage, or the total amount retained, may be reduced; although, any reduction in retainage, below the ten (10) percent level, is made solely at the CONSULTANT's discretion. All remaining retainage held will be included in the final payment to the Contractor.

13.2.1 Waivers of Mechanic's Lien

With each Application for Payment OWNER may require CONTRACTOR to submit waivers of mechanic's lien from entities lawfully entitled to file a mechanic's lien arising out of the Contract and related to the Work covered by the payment.

13.2.1.1 Requirement for waivers of Mechanic's Lien on Partial Applications for Payment will be determined and communicated at the Preconstruction Conference.

13.2.1.2 Submit partial waivers on each item for amount requested in previous application, after deduction for retainage, on each item.

13.2.1.3 When an application shows completion of an item, submit conditional final or full waivers.

13.2.1.4 Owner reserves the right to designate which entities involved in the Work must submit waivers.

13.2.1.5 Waiver Forms: Submit executed waivers of lien on forms acceptable to Owner.

13.3 CONTRACTOR'S Warranty of Title

CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

13.4 Review of Applications for Progress Payment

13.4.1 Submission of Application for Payment

CONSULTANT will, after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing CONSULTANT'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

13.4.2 CONSULTANT'S Recommendation

CONSULTANT may refuse to recommend the whole or any part of any payment, if, in CONSULTANT'S opinion, it would be incorrect to make such representations to OWNER. CONSULTANT may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in CONSULTANT'S opinion to protect OWNER from loss because:

13.4.2.1 the Work is defective, or completed Work has been damaged requiring correction or replacement;

13.4.2.2 the Contract Price has been reduced by Written Amendment or Change Order;

13.4.2.3 OWNER has been required to correct defective Work or complete Work in accordance with paragraph 12.8; or

13.4.2.4 of CONSULTANT's actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.2.1 through 14.2.9 inclusive.

13.5 Partial Utilization

OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and has been completed. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER that said part of the Work is complete and request that a Certificate of Completion be issued for that part of the Work.

13.6 Final Inspection

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, CONSULTANT will make a final inspection with CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

13.7 Final Application for Payment

After CONTRACTOR has completed all such corrections to the satisfaction of CONSULTANT and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 5.14) and other documents - all as required by the Contract Documents, and after CONSULTANT has indicated that the Work is acceptable (subject to the provisions of paragraph 13.10), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER'S property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or Supplier fails to

furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

13.8 Final Payment and Acceptance

13.8.1 CONSULTANT'S Approval

If, on the basis of CONSULTANT'S observation of the Work during construction and final inspection, and CONSULTANT'S review of the final Application for Payment and accompanying documentation - all as required by the Contract Documents, CONSULTANT is satisfied that the Work has been completed and CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, CONSULTANT will, after receipt of the final Application for Payment, indicate in writing CONSULTANT'S recommendation of payment and present the Application to OWNER for payment. Thereupon CONSULTANT will give written notice to OWNER and CONTRACTOR that the Work is acceptable, subject to the provisions of paragraph 13.10. Otherwise, CONSULTANT will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application.

13.8.2 Delay in Completion of Work

If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, OWNER shall, upon receipt of CONTRACTOR'S final Application for Payment and recommendation of CONSULTANT, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 10 of Part II, Information for Bidders, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to CONSULTANT with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

13.9 CONTRACTOR'S Continuing Obligation

CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by CONSULTANT, nor the issuance of a certificate of Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor any correction of defective Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the

Work in accordance with the Contract Documents (except as provided in paragraph 13.10).

13.10 Waiver of Claims

The making and acceptance of final payment will constitute:

13.10.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by OWNER of any rights in respect of CONTRACTOR'S continuing obligations under the Contract Documents; and

13.10.2 a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

14. SUSPENSION OF WORK AND TERMINATION

14.1 OWNER May Suspend Work

OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and CONSULTANT which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 10 and 11.

14.2 OWNER May Terminate

The OWNER may terminate the Work upon the occurrence of any one or more of the following events:

14.2.1 if CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

14.2.2 if a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

14.2.3 if CONTRACTOR makes a general assignment for the benefit of creditors;

14.2.4 if a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR'S creditors;

14.2.5 if CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

14.2.6 if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.8 as revised from time to time);

14.2.7 if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

14.2.8 if CONTRACTOR disregards the authority of CONSULTANT, or

14.2.9 if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) such excess will be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such costs incurred by OWNER will be approved as to reasonableness by CONSULTANT and incorporated in a Change Order,

but when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

14.2.10 If safety violations are observed and brought to the Contractors attention and Contractor fails to take immediate corrective measures any repeat of similar safety violations, Owner will order an immediate termination of contract. Note: it is the Contractor's responsibility to know proper safety measures as they pertain to construction and OSHA.

14.2.11 This contract may be canceled by either party thirty (30) days after delivery by canceling party of written notice of intent to cancel to the other contracting party.

14.2.12 This contract may be canceled by the Lexington-Fayette Urban County Government if it is determined that the Bidder has failed to perform under the terms of this agreement, such cancellation to be effective upon receipt of written notice of cancellation by the Bidder.

14.3 CONTRACTOR'S Services Terminated

Where CONTRACTOR'S services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

14.4 Payment After Termination

Upon seven days' written notice to CONTRACTOR, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and any expense sustained plus reasonable termination expenses, which will include, but not be limited to, direct, indirect and consequential costs (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs).

14.5 CONTRACTOR May Stop Work or Terminate

If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or CONSULTANT fails to act on any Application for Payment within sixty days after it is submitted, or OWNER fails for sixty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to OWNER and CONSULTANT, terminate the Agreement and recover from OWNER payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if CONSULTANT has failed to act on an Application for Payment or OWNER has failed to make any payment as aforesaid, CONTRACTOR may upon seven days' written notice to OWNER and

CONSULTANT stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under paragraph 5.16 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER.

15. MISCELLANEOUS

15.1 Claims for Injury or Damage

Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 15.1 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

15.2 Non-Discrimination in Employment

The CONTRACTOR shall comply with the following requirements prohibiting discrimination:

15.2.1 That no person (as defined in KRS 344.010) shall bid on Lexington-Fayette Urban County Government construction projects, or bid to furnish materials or supplies to the Lexington-Fayette Urban County Government, if, within six months prior to the time of opening of bids, said person shall have been found, by declaratory judgment action in Fayette Circuit Court, to be presently engaging in an unlawful practice, as hereinafter defined. Such declaratory judgment action may be brought by an aggrieved individual or upon an allegation that an effort at conciliation pursuant to KRS 344.200 has been attempted and failed, by the Lexington-Fayette County Human Rights Commission.

15.2.2 That it is an unlawful practice for an employer:

15.2.2.1 to fail or refuse to hire, or to discharge any individual or otherwise to discriminate against an individual, with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age, or national origin; or

15.2.2.2 to limit, segregate or classify his employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's sex, race, color, religion, age, or national origin.

15.2.3 That it is an unlawful practice for an employer, labor organization, or joint-labor management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against an individual because of his race, color, religion, sex, age, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

15.2.4 That a copy of this Ordinance shall be furnished all suppliers and made a part of all bid specifications.

15.2.5 This Ordinance shall take effect after it is signed, published and recorded, as required by law.

15.3 Temporary Street Closing or Blockage

The CONTRACTOR will notify the CONSULTANT at least 72 hours prior to making any temporary street closing or blockage. This will permit orderly notification to all concerned public agencies. Specific details and restrictions on street closure or blockage are contained in the Special Conditions.

15.4 Percentage of Work Performed by prime CONTRACTOR

The CONTRACTOR shall perform on site, and with its own organization, Work equivalent to at least fifty (50%) percent of the total amount of Work to be performed under the Contract. This percentage may be reduced by a supplemental agreement to this Contract if, during performing the Work, the CONTRACTOR requests a reduction and the CONSULTANT determines that the reduction would be to the advantage of the OWNER.

15.5 Clean-up

Cleanup shall progress, to the greatest degree practicable, throughout the course of the Work. The Work will not be considered as completed, and final payment will not be made, until the right-of-way and all ground occupied or affected by the Contractor in connection with the Work has been cleared of all rubbish, equipment, excess materials, temporary structures, and weeds. Rubbish and all waste materials of whatever nature shall be disposed of, off of the project site, in an acceptable manner. All property, both public and private, which has been damaged in the prosecution of the Work, shall be restored in an acceptable manner. All areas shall be draining, and all drainage ways shall be left unobstructed, and in such a condition that drift will not collect or scour be induced.

15.6 General

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 12.1, 12.3.5, 13.3, and 15.2 and all of the rights and remedies available to OWNER and CONSULTANT thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies

available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Agreement.

15.7 Debris Disposal

For all LFUCG projects any trash, construction demolition debris, yard waste, dirt or debris of any kind that is removed from the project site must be disposed of in accordance with local, state, and federal regulations. The disposal site or facility must be approved in advance by the LFUCG and disposal documentation is required. The Contractor will be responsible for payment of any fines associated with improper disposal of material removed from the project site.

END OF SECTION

SPECIAL CONDITIONS – EXHIBIT C

I. RISK MANAGEMENT PROVISIONS, INSURANCE & INDEMNIFICATION

The CONTRACTOR understands and agrees that the Risk Management Provisions of this Agreement (Contract) define the responsibilities of the CONTRACTOR to the Owner.

As used in these Risk Management Provisions, the terms “CONTRACTOR” and “Owner” shall be defined as follows:

“CONTRACTOR” means the CONTRACTOR and its employees, agents, servants, owners, principals, licensees, assigns and Subcontractors of any tier.

“Owner” means the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.

1. Indemnification and Hold Harmless Provision

1. It is understood and agreed by the parties that CONTRACTOR hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of CONTRACTOR under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.
2. CONTRACTOR shall indemnify, save, hold harmless and defend the Owner from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney’s fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by CONTRACTOR’s performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the CONTRACTOR; and (b) not caused solely by the active negligence or willful misconduct of the Owner.
3. In the event the Owner is alleged to be liable based upon the above, CONTRACTOR shall defend such allegations and shall bear all costs,

fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by the Owner, which approval shall not be unreasonably withheld.

4. These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this Agreement (Contract).
5. The Work and services performed hereunder involve a Consent Decree as further explained in of Section 00100, provision 1.13 of these specifications. The provisions of that provision are incorporated herein by reference as if expressly stated.
6. Owner is a political subdivision of the Commonwealth of Kentucky. CONTRACTOR acknowledges and agrees that the Owner is unable to provide indemnity or otherwise save, hold harmless, or defend the CONTRACTOR in any manner.

2. FINANCIAL RESPONSIBILITY

The CONTRACTOR understands and agrees that it shall, prior to final acceptance of its Bid and the commencement of any Work, demonstrate the ability to assure compliance with the Indemnity Agreement and other provisions of this Agreement (Contract).

3. INSURANCE REQUIREMENTS

Bidders' attention is directed to the following insurance requirements, as Bidders must confer with their respective insurance agents, brokers, or carriers to determine in advance of Bid submission the availability of the insurance coverage's and endorsements required herein. If an apparent low Bidder fails to comply strictly with the insurance requirements below, that Bidder shall be disqualified from the award of the Agreement (Contract), at the Owner's discretion.

1. Required Insurance Coverage

CONTRACTOR shall procure and maintain for the duration of this Agreement (Contract) the following or equivalent insurance policies at no less than the limits shown below and cause its subCONTRACTORs to maintain similar insurance with limits acceptable to Owner in order to protect Owner against claims for injuries to persons or damages to property which may arise from or in connection with the performance of

the Work hereunder by CONTRACTOR. The cost of such insurance shall be included in any Bid.

<u>Coverage</u>	<u>Limits</u>
General Liability (Insurance Services Office Form CG 00 01)	\$1 million per occurrence \$2 million aggregate, or \$2 million combined single limit
Commercial Automobile Liability (Insurance Services Office Form CA 0001)	Combined single, \$1 million per occurrence
Worker's Compensation	Statutory
Employer's Liability	\$500,000

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky (DOI). Owner shall be named as additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by Owner.
- c. The General Liability Policy shall include a Products and Completed Operations endorsement or Premises and Operations Liability endorsement unless it is deemed not to apply by Owner.
- d. The General Liability Policy shall include an Explosion-Collapse Underground (XCU) endorsement.
- e. The General Liability Policy shall include a Pollution Liability and/or Environmental Casualty endorsement unless it is deemed not to apply by Owner.
- f. Owner shall be provided at least thirty (30) days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.

- g. Said coverage shall be written by insurers acceptable to Owner and shall be in a form acceptable to Owner. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.
- h. Owner requests that the Bidder obtain an Umbrella Liability endorsement to the CGL policy for a limit of liability of \$ [REDACTED] and that this CGL policy endorsement be renewed for one (1) year after completion of this project.

2. Renewals

After insurance has been approved by Owner, evidence of renewal of an expiring policy must be submitted to Owner, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

3. Deductibles and Self-Insured Programs

IF CONTRACTOR INTENDS TO SUBMIT SELF-INSURANCE PLAN, IT MUST BE FORWARDED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, DIVISION OF RISK MANAGEMENT, 200 EAST MAIN STREET, LEXINGTON, KENTUCKY 40507 NO LATER THAN A MINIMUM OF FIVE (5) WORKING DAYS

PRIOR TO BID OPENING DATE. Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government's Division of Risk Management, upon review of evidence of CONTRACTOR's financial capacity to respond to claims. Any such programs or retentions must provide Owner with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If CONTRACTOR satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, CONTRACTOR agrees to provide Lexington-Fayette Urban County Government, Division of Risk Management, the following data prior to the final acceptance of Bid and the commencement of work:

- a. CONTRACTOR's latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statement.
- c. Actuarial funding reports or retained losses.
- d. Risk Management Manual or a description of self-insurance and risk management program.
- e. A claim loss run summary for the previous five (5) years.
- f. Self-Insured Associations will be considered.

4. Safety and Loss Control

CONTRACTOR shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and the Owner.

5. Verification of Coverage

Prior to award of bid, CONTRACTOR agrees to furnish Owner with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf.

If requested, CONTRACTOR shall provide Owner copies of all insurance policies, including all endorsements.

6. Right to Review, Audit and Inspect

CONTRACTOR understands and agrees that Owner may review, audit and inspect any and all of CONTRACTOR's records and operations to insure compliance with these Insurance Requirements.

7. CONTRACTOR understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default under this Agreement (Contract). CONTRACTOR also agrees that Owner may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging CONTRACTOR for any such insurance premiums purchased, or suspending or terminating this Agreement (Contract).

II. WEATHER RELATED DELAYS

The Project Completion date shall be established with the understanding that no extension of time will be granted for weather related delays that are within the average temperature or number of rain or snow days within a particular month. The average weather conditions shall be established by referencing the records of the National Oceanic and Atmospheric Administration (NOAA) and as defined herein.

1. Extensions of Inclement Weather

Extensions of inclement weather shall be granted only when the work affected must be on schedule at the time of delay. No time will be granted for work which is behind schedule in excess of the actual delay caused by the weather, assuming the work had been on schedule.

1. Time granted for weather delays shall be requested on a monthly basis.
2. The weather experienced at the project site during the contract period must be found to be unusually severe, that is more severe than the adverse weather anticipated for the project location during any given month. The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the contractor.
3. The anticipated adverse weather delays shall be based on the National Oceanic and Atmospheric Administration (NOAA) climatology ten year average for the Lexington Bluegrass Airport KY US location. The Mean Number of Days of daily precipitation using ≥ 0.10 will determine the base line for monthly anticipated adverse weather evaluations. The contractor's progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities. Upon acknowledgement of the Notice to Proceed (NTP) and continuing throughout the contract, the contractor will record the occurrence of actual adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical path activities for 50 percent or more of the contractor's scheduled work date. The number of actual adverse weather delay days shall be calculated chronologically from the first to the last day of each month, and be recorded as full days. The number of actual adverse weather days greater than the number of anticipated adverse weather days, listed above, shall be the number of unusually severe weather days for the purposes of any contract extensions (actual adverse weather days - anticipated adverse weather days = unusually severe weather days.)

2. Definitions:

1. "Unusually severe weather" - weather that is more severe than the adverse weather anticipated for the season or location involved.
2. "Adverse weather" - atmospheric conditions at a definite time and place that are unfavorable to construction activities.

SECTION 061000
ROUGH CARPENTRY

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
1. Wood blocking and nailers.

1.2 DEFINITIONS

- A. Boards or Strips: Lumber of less than 2 inches nominal (38 mm actual) size in least dimension.
- B. Dimension Lumber: Lumber of 2 inches nominal (38 mm actual) size or greater but less than 5 inches nominal (114 mm actual) size in least dimension.

1.3 ACTION SUBMITTALS

- A. Product Data: For each type of process and factory-fabricated product. Indicate component materials and dimensions and include construction and application details.
1. Include data for wood-preservative treatment from chemical treatment manufacturer and certification by treating plant that treated materials comply with requirements. Indicate type of preservative used and net amount of preservative retained.
- B. Fastener Patterns: Full-size templates for fasteners in exposed framing.

1.4 INFORMATIONAL SUBMITTALS

- A. Evaluation Reports: For the following, from ICC-ES:
1. Wood-preservative-treated wood.
 2. Power-driven fasteners.
 3. Post-installed anchors.

1.5 DELIVERY, STORAGE, AND HANDLING

- A. Stack wood products flat with spacers beneath and between each bundle to provide air circulation. Protect wood products from weather by covering with waterproof sheeting, securely anchored. Provide for air circulation around stacks and under coverings.

PART 2 - PRODUCTS

2.1 WOOD PRODUCTS, GENERAL

- A. Lumber: DOC PS 20 and applicable rules of grading agencies indicated. If no grading agency is indicated, comply with the applicable rules of any rules-writing agency certified by the ALSC Board of Review. Grade lumber by an agency certified by the ALSC Board of Review to inspect and grade lumber under the rules indicated.
 - 1. Factory mark each piece of lumber with grade stamp of grading agency.
 - 2. Dress lumber, S4S, unless otherwise indicated.
- B. Maximum Moisture Content of Lumber: 15 percent for 2-inch nominal (38-mm actual) thickness or less; 19 percent for more than 2-inch nominal (38-mm actual) thickness

2.2 WOOD-PRESERVATIVE-TREATED LUMBER

- A. Preservative Treatment by Pressure Process: AWWPA U1; Use Category UC3b for exterior construction not in contact with ground
 - 1. Preservative Chemicals: Acceptable to authorities having jurisdiction and containing no arsenic or chromium.
- B. Kiln-dry lumber after treatment to a maximum moisture content of 19 percent. Do not use material that is warped or that does not comply with requirements for untreated material.
- C. Mark lumber with treatment quality mark of an inspection agency approved by the ALSC Board of Review.
- D. Application: Treat all rough carpentry unless otherwise indicated.
 - 1. Wood cants, nailers, curbs, equipment support bases, blocking, stripping, and similar members in connection with roofing, flashing, vapor barriers, and waterproofing.

2.3 DIMENSION LUMBER FRAMING

2.4 MISCELLANEOUS LUMBER

- A. General: Provide miscellaneous lumber indicated and lumber for support or attachment of other construction, including the following:
 - 1. Blocking.
 - 2. Nailers.
- B. Dimension Lumber Items: Construction or No. 2
- C. For blocking and nailers used for attachment of other construction, select and cut lumber to eliminate knots and other defects that will interfere with attachment of other work.

2.5 FASTENERS

- A. General: Fasteners shall be of size and type indicated and shall comply with requirements specified in this article for material and manufacture.
- B. Nails, Brads, and Staples: ASTM F1667.
- C. Power-Driven Fasteners: Fastener systems with an evaluation report acceptable to authorities having jurisdiction, based on ICC-ES AC70.
- D. Post-Installed Anchors: Fastener systems with an evaluation report acceptable to authorities having jurisdiction, based on ICC-ES AC01 ICC-ES AC193 as appropriate for the substrate.
 - 1. Material: Carbon-steel components, zinc plated to comply with ASTM B633, Class Fe/Zn 5.
 - 2. Material: Stainless steel with bolts and nuts complying with ASTM F593 and ASTM F594, Alloy Group 1 or 2 (ASTM F738M and ASTM F836M, Grade A1 or A4).

2.6 MISCELLANEOUS MATERIALS

- A. Water-Repellent Preservative: NWWDA-tested and -accepted formulation containing 3-iodo-2-propynyl butyl carbamate, combined with an insecticide containing chloropyrifos as its active ingredient.

PART 3 - EXECUTION

3.1 INSTALLATION, GENERAL

- A. Provide blocking and framing as indicated and as required to support facing materials, fixtures, specialty items, and trim.
 - 1. Provide metal clips for fastening gypsum board or lath at corners and intersections where framing or blocking does not provide a surface for fastening edges of panels. Space clips not more than 16 inches (406 mm) o.c.
- B. Sort and select lumber so that natural characteristics do not interfere with installation or with fastening other materials to lumber. Do not use materials with defects that interfere with function of member or pieces that are too small to use with minimum number of joints or optimum joint arrangement.
- C. Comply with AWPA M4 for applying field treatment to cut surfaces of preservative-treated lumber..
 - 1. Use copper naphthenate for items not continuously protected from liquid water.
- D. Where wood-preservative-treated lumber is installed adjacent to metal decking, install continuous flexible flashing separator between wood and metal decking.
- E. Securely attach rough carpentry work to substrate by anchoring and fastening as indicated, complying with the following:

1. Table 2304.9.1, "Fastening Schedule," in ICC's International Building Code (IBC).
2. ICC-ES evaluation report for fastener.

3.2 INSTALLATION OF WOOD BLOCKING AND NAILERS

- A. Install where indicated and where required for attaching other work. Form to shapes indicated and cut as required for true line and level of attached work. Coordinate locations with other work involved.
- B. Attach items to substrates to support applied loading. Recess bolts and nuts flush with surfaces unless otherwise indicated.

3.3 PROTECTION

- A. Protect wood that has been treated with inorganic boron (SBX) from weather. If, despite protection, inorganic boron-treated wood becomes wet, apply EPA-registered borate treatment. Apply borate solution by spraying to comply with EPA-registered label.

END OF SECTION 061000

SECTION 075323**ETHYLENE-PROPYLENE-DIENE-MONOMER (EPDM) ROOFING****PART 1 - GENERAL****1.1 RELATED DOCUMENTS****1.2 SUMMARY****A. Section Includes:**

1. Adhered ethylene-propylene-diene-terpolymer (EPDM) roofing system.
2. Roof insulation.
3. Recovery board.
4. Walkways.

B. Related Requirements:

- 1.
2. Section 077100 "Roof Specialties" for copings and roof edge sheet metal flashings.

1.3 DEFINITIONS

- A. Roofing Terminology:** Definitions in ASTM D1079 and glossary of NRCA's "The NRCA Roofing Manual: Membrane Roof Systems" apply to work of this Section.

1.4 PREINSTALLATION MEETINGS**A. Preinstallation Roofing Conference:**

1. Meet with Owner, Construction Manager, Any related trades representative, roofing Installer, roofing system manufacturer's representative.
2. Review methods and procedures related to roofing installation, including manufacturer's written instructions.
3. Review and finalize construction schedule, and verify availability of materials, Installer's personnel, equipment, and facilities needed to make progress and avoid delays.
4. Examine deck substrate conditions and finishes, including flatness and fastening.
5. Review structural loading limitations of roof deck during and after roofing.
6. Review base flashings, special roofing details, roof drainage, roof penetrations, equipment curbs, and condition of other construction that affects roofing system.
7. Review governing regulations and requirements for insurance and certificates if applicable.
8. Review temporary protection requirements for roofing system during and after installation.
9. Review roof observation and repair procedures after roofing installation.

1.5 ACTION SUBMITTALS

- A. Product Data: For each type of product.
- B. Samples for Verification: For the following products:
 - 1. Roof membrane and flashings of color required.
- C. Wind Uplift Resistance Submittal: For roofing system, indicating compliance with wind uplift performance requirements.

1.6 INFORMATIONAL SUBMITTALS

- A. Qualification Data: For Installer and manufacturer.
- B. Manufacturer Certificates:
 - 1. Performance Requirement Certificate: Signed by roof membrane manufacturer, certifying that roofing system complies with requirements specified in "Performance Requirements" Article.
 - a. Submit evidence of complying with performance requirements.
 - 2. Special Warranty Certificate: Signed by roof membrane manufacturer, certifying that all materials supplied under this Section are acceptable for special warranty.
- C. Field quality-control reports.
- D. Sample Warranties: For manufacturer's special warranties.

1.7 CLOSEOUT SUBMITTALS

- A. Maintenance Data: For roofing system to include in maintenance manuals.

1.8 QUALITY ASSURANCE

- A. Installer Qualifications: A qualified firm that is approved, authorized, or licensed by roofing system manufacturer to install manufacturer's product and that is eligible to receive manufacturer's special warranty.

1.9 DELIVERY, STORAGE, AND HANDLING

- A. Deliver roofing materials to Project site in original containers with seals unbroken and labeled with manufacturer's name, product brand name and type, date of manufacture, approval or listing agency markings, and directions for storing and mixing with other components.

- B. Store liquid materials in their original undamaged containers in a clean, dry, protected location and within the temperature range required by roofing system manufacturer. Protect stored liquid material from direct sunlight.
 - 1. Discard and legally dispose of liquid material that cannot be applied within its stated shelf life.
- C. Protect roof insulation materials from physical damage and from deterioration by sunlight, moisture, soiling, and other sources. Store in a dry location. Comply with insulation manufacturer's written instructions for handling, storing, and protecting during installation.
- D. Handle and store roofing materials, and place equipment in a manner to avoid permanent deflection of deck.

1.10 FIELD CONDITIONS

- A. Weather Limitations: Proceed with installation only when existing and forecasted weather conditions permit roofing system to be installed according to manufacturer's written instructions and warranty requirements.

1.11 WARRANTY

- A. Special Warranty: Manufacturer agrees to repair or replace components of roofing system that fail in materials or workmanship within specified warranty period.
 - 1. Special warranty includes roof membrane, base flashings, cover boards, and other components of roofing system.
 - 2. Warranty Period: 20 years from Date of Substantial Completion.
- B. Special Project Warranty: Submit roofing Installer's warranty, on warranty form at end of this Section, signed by Installer, covering the Work of this Section, including all components of roofing system such as roof membrane, base flashing, cover boards and other components of the Section for the following warranty period:
 - 1. Warranty Period: 2 years from Date of Substantial Completion.

PART 2 - PRODUCTS

2.1 PERFORMANCE REQUIREMENTS

- A. General Performance: Installed roofing system and base flashings shall withstand specified uplift pressures, thermally induced movement, and exposure to weather without failure due to defective manufacture, fabrication, installation, or other defects in construction. Roofing and flashings shall remain watertight.
 - 1. Accelerated Weathering: Roof membrane shall withstand 2000 hours of exposure when tested according to ASTM G152, ASTM G154, or ASTM G155.

2. Impact Resistance: Roof membrane shall resist impact damage when tested according to ASTM D3746, ASTM D4272, or the Resistance to Foot Traffic Test in FM Approvals 4470.
- B. Material Compatibility: Roofing materials shall be compatible with one another and adjacent materials under conditions of service and application required, as demonstrated by roof membrane manufacturer based on testing and field experience.
- C. Wind Uplift Resistance: Design roofing system to resist the following wind uplift pressures when tested according to FM Approvals 4474, UL 580, or UL 1897:
 - a. To be provided by Garland / DBS Inc.
- D. Fire-Resistance Ratings: Comply with fire-resistance-rated assembly designs indicated. Identify products with appropriate markings of applicable testing agency.

2.2 ETHYLENE-PROPYLENE-DIENE-TERPOLYMER (EPDM) ROOFING

- A. EPDM Sheet: ASTM D4637/D4637M, Type II, scrim or fabric internally reinforced EPDM sheet.
 1. Rubbertite EPDM by Viking Products Group
 2. Thickness: 60 mils (1.5 mm), nominal.
 3. Exposed Face Color: Black.
 4. Source Limitations: Obtain components for roofing system from manufacturers approved by roof membrane manufacturer.

2.3 AUXILIARY ROOFING MATERIALS

- A. General: Auxiliary materials recommended by roofing system manufacturer for intended use and compatible with other roofing components.
 1. Adhesive and Sealants: Comply with VOC limits of authorities having jurisdiction.
- B. Sheet Flashing: 60-mil- (1.5-mm-) thick EPDM, partially cured or cured, according to application.
- C. Protection Sheet: Epichlorohydrin or neoprene nonreinforced flexible sheet, 55 to 60 mils (1.4 to 1.5 mm) thick, recommended by EPDM manufacturer for resistance to hydrocarbons, non-aromatic solvents, grease, and oil.
- D. Slip Sheet: ASTM D2178/D2178M, Type IV; glass fiber; asphalt-impregnated felt.
- E. Slip Sheet: Manufacturer's standard, of thickness required for application.
- F. Prefabricated Pipe Flashings: As recommended by roof membrane manufacturer.
- G. Roof Vents: As recommended by roof membrane manufacturer.
 1. Size: Not less than 4-inch (100-mm) diameter.

- H. Bonding Adhesive: Manufacturer's standard.
- I. Seaming Material: Single-component, butyl splicing adhesive and splice cleaner OR Manufacturer's standard, synthetic-rubber polymer primer and 3-inch- (75-mm-) wide minimum, butyl splice tape with release film OR Factory-applied seam tape, width as recommended by manufacturer.
- J. Lap Sealant: Manufacturer's standard, single-component sealant.
- K. Water Cutoff Mastic: Manufacturer's standard butyl mastic sealant.
- L. Metal Termination Bars: Manufacturer's standard, predrilled stainless steel or aluminum bars, approximately 1 by 1/8 inch (25 by 3 mm) thick; with anchors.
- M. Metal Battens: Manufacturer's standard, aluminum-zinc-alloy-coated or zinc-coated steel sheet, approximately 1 inch wide by 0.05 inch thick (25 mm wide by 1.3 mm thick), prepunched.
- N. Fasteners: Factory-coated steel fasteners and metal or plastic plates complying with corrosion-resistance provisions in FM Approvals 4470, designed for fastening components to substrate, and acceptable to roofing system manufacturer.
- O. Miscellaneous Accessories: Provide pourable sealers, preformed cone and vent sheet flashings, molded pipe boot flashings, preformed inside and outside corner sheet flashings, reinforced EPDM securement strips, T-joint covers, in-seam sealants, termination reglets, cover strips, and other accessories.

2.4 RECOVERY BOARDS

- A. Recovery Board: ASTM C1177/C1177M, glass-mat, water-resistant gypsum board or ASTM C1278/C1278M, fiber-reinforced gypsum board.
 - 1. Dens deck Prime
 - 2. Thickness: 1/2 inch.
 - 3. Surface Finish: Factory Primed.
- B. Fasteners: Factory-coated steel fasteners and metal or plastic plates complying with corrosion-resistance provisions in FM Approvals 4470, designed for fastening substrate panel to roof deck.

2.5 ROOF INSULATION

For Wet Roofing Removal, Drain/Skylight replacement areas for In Fill ONLY

- A. General: Preformed roof insulation boards as approved by EPDM roof membrane manufacturer.
- B. Polyisocyanurate Board Insulation: ASTM C1289, felt or glass-fiber mat facer on both major surfaces.
 - 1. Compressive Strength: 20 psi (138 kPa)
 - 2. Size: 48 by 48 inches (1219 by 1219 mm)
 - 3. Thickness: To match existing wet roofing removal areas only.

4. Tapered: Provided tapered board as needed per plan to provide positive drainage (crickets, saddles, drain sumps, etc.)

2.6 INSULATION ACCESSORIES

- A. General: Roof insulation accessories recommended by insulation manufacturer for intended use and compatibility with other roofing system components.
- B. Fasteners: Factory-coated steel fasteners and metal or plastic plates complying with corrosion-resistance provisions in FM Approvals 4470, designed for fastening roof insulation and recovery boards to substrate, and acceptable to roofing system manufacturer.
- C. Insulation Adhesive: Insulation manufacturer's recommended adhesive formulated to attach roof insulation to substrate or to another insulation layer as follows:
 1. Insul-lock HR by The Garland Company

2.7 WALKWAYS

- A. Flexible Walkways: Factory-formed, nonporous, heavy-duty, slip-resisting, surface-textured walkway pads or rolls, approximately 3/16 inch (5 mm) thick and acceptable to roofing system manufacturer.

2.8 EXAMINATION

- A. Examine substrates, areas, and conditions, with Installer present, for compliance with requirements and other conditions affecting performance of the Work.
 1. Verify that roof openings and penetrations are in place, curbs are set and braced, and roof-drain bodies are securely clamped in place.
 2. Verify that wood blocking, curbs, and nailers are securely anchored to roof deck at penetrations and terminations and that nailers match thicknesses of insulation.
 3. Verify that surface plane flatness and fastening of steel roof deck complies with requirements in Section 053100 "Steel Decking."
 4. Verify adjacent cementitious wood-fiber panels are vertically aligned to within 1/8 inch (3.2 mm) at top surface.
- B. Proceed with installation only after unsatisfactory conditions have been corrected.

2.9 PREPARATION

- A. Clean substrate of dust, debris, moisture, and other substances detrimental to roofing system installation according to roofing system manufacturer's written instructions. Remove sharp projections.
- B. Prevent materials from entering and clogging roof drains and conductors and from spilling or migrating onto surfaces of other construction. Remove roof-drain plugs when no work is taking place or when rain is forecast.

- C. Install sound-absorbing insulation strips according to acoustical roof deck manufacturer's written instructions.

2.10 INSTALLATION OF ROOFING, GENERAL

- A. Install roofing system according to roofing system manufacturer's written instructions,
- B. Complete terminations and base flashings and provide temporary seals to prevent water from entering completed sections of roofing system at end of workday or when rain is forecast. Remove and discard temporary seals before beginning work on adjoining roofing.
- C. Install roof membrane and auxiliary materials to tie in to existing roofing to maintain weathertightness of transition and to not void warranty for existing roofing system.

2.11 INSTALLATION OF INSULATION

- A. Where drains are to be replaced and where wet roofing is to be removed:
 - 1. Coordinate as needed with other trades to allow work to progress.
 - 2. Remove existing BUR and insulation materials down to the metal deck.
 - 3. Install the new insulation with mechanical fasteners per manufactures fastening pattern.
 - 4. At each drain provide tapered insulation to create a minimum 4ft x 4ft tapered sump in coordination with rood drain installer/plumbing to provide better positive drainage.
 - 5. Infill each wet roofing removal area with matching insulation height as removed as well as the thickness of the original roof.
- B. Installation Over Metal Decking:
 - 1. Install base layer of insulation with staggered joints as needed where multiple layers of insulation are present. .
 - a. Locate end joints over crests of decking.
 - b. Where installing composite and noncomposite insulation in two or more layers, install noncomposite board insulation for bottom layer and intermediate layers, if applicable, and install composite board insulation for top layer.
 - c. Trim insulation neatly to fit around penetrations and projections, and to fit tight to intersecting sloping roof decks.
 - d. Make joints between adjacent insulation boards not more than 1/4 inch (6 mm) in width.
 - e. At internal roof drains, slope insulation to create a square drain sump with each side equal to the diameter of the drain bowl plus 24 inches (610 mm).
 - 1) Trim insulation so that water flow is unrestricted.
 - f. Fill gaps exceeding 1/4 inch (6 mm) with insulation.
 - g. Cut and fit insulation within 1/4 inch (6 mm) of nailers, projections, and penetrations.
 - h. Loosely lay base layer of insulation units over substrate.

- i. Mechanically attach base layer of insulation using mechanical fasteners specifically designed and sized for fastening specified board-type roof insulation to metal decks.
 - 1) Fasten insulation according to requirements in manufacturers guidelines.
 - 2) Fasten insulation to resist specified uplift pressure at corners, perimeter, and field of roof.

2.12 INSTALLATION OF RECOVERY BOARDS

- A. Install recovery boards over insulation with long joints in continuous straight lines with end joints staggered between rows. Offset joints of insulation below a minimum of 6 inches (150 mm) in each direction.
 - 1. Trim recovery board neatly to fit around penetrations and projections, and to fit tight to intersecting sloping roof decks.
 - 2. At internal roof drains, conform to slope of drain sump.
 - a. Trim cover board so that water flow is unrestricted.
 - 3. Cut and fit cover board tight to nailers, projections, and penetrations.
 - 4. Loosely lay cover board over substrate.
 - 5. Adhere recovery board to substrate using adhesive according to manufacturers provided ribbon pattern.
 - a. Set recovery board in ribbons of bead-applied insulation adhesive, firmly pressing and maintaining insulation in place.

2.13 INSTALLATION OF ADHERED ROOF MEMBRANE

- A. Adhere roof membrane over area to receive roofing according to roofing system manufacturer's written instructions.
- B. Unroll membrane roof membrane and allow to relax before installing.
- C. Start installation of roofing in presence of roofing system manufacturer's technical personnel.
- D. Accurately align roof membrane, and maintain uniform side and end laps of minimum dimensions required by manufacturer. Stagger end laps.
- E. Bonding Adhesive: Apply to substrate and underside of roof membrane at rate required by manufacturer, and allow to partially dry before installing roof membrane. Do not apply to splice area of roof membrane.
- F. In addition to adhering, mechanically fasten roof membrane securely at terminations, penetrations, and perimeters.
- G. Apply roof membrane with side laps shingled with slope of roof deck where possible.
- H. Adhesive Seam Installation: Clean both faces of splice areas, apply splicing cement.

1. Firmly roll side and end laps of overlapping roof membrane to ensure a watertight seam installation.
 2. Apply lap sealant and seal exposed edges of roofing terminations.
 3. Apply a continuous bead of in-seam sealant before closing splice if required by roofing system manufacturer.
- I. Tape Seam Installation: Clean and prime both faces of splice areas, apply splice tape.
1. Firmly roll side and end laps of overlapping roof membrane to ensure a watertight seam installation.
 2. Apply lap sealant and seal exposed edges of roofing terminations.
- J. Factory-Applied Seam Tape Installation: Clean and prime surface to receive tape.
1. Firmly roll side and end laps of overlapping roof membrane to ensure a watertight seam installation.
 2. Apply lap sealant and seal exposed edges of roofing terminations.
- K. Repair tears, voids, and lapped seams in roof membrane that do not comply with requirements.
- L. Spread sealant or mastic bed over deck-drain flange at roof drains, and securely seal roof membrane in place with clamping ring.
- M. Adhere protection sheet over roof membrane at locations indicated.

2.14 INSTALLATION OF BASE FLASHING

- A. Install sheet flashings and preformed flashing accessories, and adhere to substrates according to roofing system manufacturer's written instructions.
- B. Apply bonding adhesive to substrate and underside of sheet flashing at required rate, and allow to partially dry. Do not apply to seam area of flashing.
- C. Flash penetrations and field-formed inside and outside corners with cured or uncured sheet flashing.
- D. Clean splice areas, apply splicing cement, and firmly roll side and end laps of overlapping sheets to ensure a watertight seam installation. Apply lap sealant and seal exposed edges of sheet flashing terminations.
- E. Terminate and seal top of sheet flashings and mechanically anchor to substrate through termination bars.

2.15 INSTALLATION OF WALKWAYS

- A. Flexible Walkways: Install walkway products according to manufacturer's written instructions.
 1. Install flexible walkways at the following locations:
 - a. Perimeter of each rooftop unit.

- b. Between each rooftop unit location, creating a continuous path connecting rooftop unit locations.
 - c. Any other locations indicated on Drawings.
2. Provide 6-inch (76-mm) clearance between adjoining pads.
 3. Adhere walkway products to substrate with compatible adhesive according to roofing system manufacturer's written instructions.

2.16 FIELD QUALITY CONTROL

- A. Final Roof Inspection: Arrange for roofing system manufacturer's technical personnel to inspect roofing installation on completion, in presence of Architect, and to prepare inspection report.
- B. Repair or remove and replace components of roofing system where inspections indicate that they do not comply with specified requirements.

2.17 PROTECTING AND CLEANING

- A. Protect roofing system from damage and wear during remainder of construction period. When remaining construction does not affect or endanger roofing system, inspect roofing system for deterioration and damage, describing its nature and extent in a written report, with copies to Architect and Owner.
- B. Correct deficiencies in or remove roofing system that does not comply with requirements, repair substrates, and repair or reinstall roofing system to a condition free of damage and deterioration at time of Substantial Completion and according to warranty requirements.
- C. Clean overspray and spillage from adjacent construction using cleaning agents and procedures recommended by manufacturer of affected construction.

ROOFING INSTALLER'S WARRANTY

- D. WHEREAS _____ of _____, herein called the "Roofing Installer," has performed roofing and associated work ("work") on the following project:

1. Owner: <Insert name of Owner>.
2. Address: <Insert address>.
3. Building Name/Type: <Insert information>.
4. Address: <Insert address>.
5. Area of Work: <Insert information>.
6. Acceptance Date: _____.
7. Warranty Period: <Insert time>.
8. Expiration Date: _____.

- E. AND WHEREAS Roofing Installer has contracted (either directly with Owner or indirectly as a subcontractor) to warrant said work against leaks and faulty or defective materials and workmanship for designated Warranty Period,
- F. NOW THEREFORE Roofing Installer hereby warrants, subject to terms and conditions herein set forth, that during Warranty Period Roofing Installer will, at Roofing Installer's own cost and expense, make or cause to be made such repairs to or replacements of said work as are necessary to correct faulty and defective work and as are necessary to maintain said work in a watertight condition.
- G. This Warranty is made subject to the following terms and conditions:
1. Specifically excluded from this Warranty are damages to work and other parts of the building, and to building contents, caused by:
 - a. lightning;
 - b. peak gust wind speed exceeding <Insert mph (m/s)>;
 - c. fire;
 - d. failure of roofing system substrate, including cracking, settlement, excessive deflection, deterioration, and decomposition;
 - e. faulty construction of parapet walls, copings, chimneys, skylights, vents, equipment supports, and other edge conditions and penetrations of the work;
 - f. vapor condensation on bottom of roofing; and
 - g. activity on roofing by others, including construction contractors, maintenance personnel, other persons, and animals, whether authorized or unauthorized by Owner.
 2. When work has been damaged by any of foregoing causes, Warranty shall be null and void until such damage has been repaired by Roofing Installer and until cost and expense thereof have been paid by Owner or by another responsible party so designated.
 3. Roofing Installer is responsible for damage to work covered by this Warranty but is not liable for consequential damages to building or building contents resulting from leaks or faults or defects of work.
 4. During Warranty Period, if Owner allows alteration of work by anyone other than Roofing Installer, including cutting, patching, and maintenance in connection with penetrations, attachment of other work, and positioning of anything on roof, this Warranty shall become null and void on date of said alterations, but only to the extent said alterations affect work covered by this Warranty. If Owner engages Roofing Installer to perform said alterations, Warranty shall not become null and void unless Roofing Installer, before starting said work, shall have notified Owner in writing, showing reasonable cause for claim, that said alterations would likely damage or deteriorate work, thereby reasonably justifying a limitation or termination of this Warranty.
 5. During Warranty Period, if original use of roof is changed and it becomes used for, but was not originally specified for, a promenade, work deck, spray-cooled surface, flooded basin, or other use or service more severe than originally specified, this Warranty shall

become null and void on date of said change, but only to the extent said change affects work covered by this Warranty.

- 6. Owner shall promptly notify Roofing Installer of observed, known, or suspected leaks, defects, or deterioration and shall afford reasonable opportunity for Roofing Installer to inspect work and to examine evidence of such leaks, defects, or deterioration.
- 7. This Warranty is recognized to be the only warranty of Roofing Installer on said work and shall not operate to restrict or cut off Owner from other remedies and resources lawfully available to Owner in cases of roofing failure. Specifically, this Warranty shall not operate to relieve Roofing Installer of responsibility for performance of original work according to requirements of the Contract Documents, regardless of whether Contract was a contract directly with Owner or a subcontract with Owner's General Contractor.

H. IN WITNESS THEREOF, this instrument has been duly executed this _____ day of _____, _____.

- 1. Authorized Signature: _____.
- 2. Name: _____.
- 3. Title: _____.

END OF SECTION 075323

SECTION 077100
ROOF SPECIALTIES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

1.2 SUMMARY

A. Section Includes:

1. Copings.
2. Roof-edge specialties.
3. Roof-edge drainage systems.
4. Reglets and counterflashings.

B. Preinstallation Conference: Conduct conference at 1135 Harry Sykes Wy, Lexington, KY 40504.

1. Meet with Owner, Architect, Owner's insurer if applicable, roofing-system testing and inspecting agency representative, roofing Installer, roofing-system manufacturer's representative, Installer, structural-support Installer, and installers whose work interfaces with or affects roof specialties, including installers of roofing materials and accessories.
2. Examine substrate conditions for compliance with requirements, including flatness and attachment to structural members.
3. Review special roof details, roof drainage, and condition of other construction that will affect roof specialties.

1.3 ACTION SUBMITTALS

A. Product Data: For each type of product.

1. Include construction details, material descriptions, dimensions of individual components and profiles, and finishes.

B. Shop Drawings: For roof specialties.

1. Include plans, elevations, expansion-joint locations, keyed details, and attachments to other work. Distinguish between plant- and field-assembled work.
2. Include details for expansion and contraction; locations of expansion joints, including direction of expansion and contraction.
3. Indicate profile and pattern of seams and layout of fasteners, cleats, clips, and other attachments.
4. Detail termination points and assemblies, including fixed points.
5. Include details of special conditions.

1.4 INFORMATIONAL SUBMITTALS

- A. Qualification Data: For manufacturer.
- B. Product Certificates: For each type of roof specialty.
- C. Product Test Reports: For copings, for tests performed by a qualified testing agency.
- D. Sample Warranty: For manufacturer's special warranty.

1.5 CLOSEOUT SUBMITTALS

- A. Maintenance Data: For roofing specialties to include in maintenance manuals.

1.6 QUALITY ASSURANCE

- A. Source Limitations: Obtain roof specialties approved by manufacturer providing roofing-system specified warranty.

1.7 DELIVERY, STORAGE, AND HANDLING

- A. Do not store roof specialties in contact with other materials that might cause staining, denting, or other surface damage. Store roof specialties away from uncured concrete and masonry.
- B. Protect strippable protective covering on roof specialties from exposure to sunlight and high humidity, except to extent necessary for the period of roof-specialty installation.

1.8 FIELD CONDITIONS

- A. Field Measurements: Verify profiles and tolerances of roof-specialty substrates by field measurements before fabrication and indicate measurements on Shop Drawings.
- B. Coordination: Coordinate roof specialties with flashing, trim, and construction of parapets, roof deck, roof and wall panels, and other adjoining work to provide a leakproof, secure, and noncorrosive installation.

1.9 WARRANTY

- A. Special Warranty on Painted Finishes: Manufacturer agrees to repair finish or replace roof specialties that show evidence of deterioration of factory-applied finishes within specified warranty period.
 - 1. Fluoropolymer Finish: Deterioration includes, but is not limited to, the following:
 - a. Color fading more than 5 Delta E units when tested according to ASTM D2244.
 - b. Chalking in excess of a No. 8 rating when tested according to ASTM D4214.
 - c. Cracking, checking, peeling, or failure of paint to adhere to bare metal.

2. Finish Warranty Period: 20 years from date of Substantial Completion.

PART 2 - PRODUCTS

2.1 PERFORMANCE REQUIREMENTS

- A. General Performance: Roof specialties shall withstand exposure to weather and resist thermally induced movement without failure, rattling, leaking, or fastener disengagement due to defective manufacture, fabrication, installation, or other defects in construction.
- B. FM Approvals' Listing: Manufacture and install copings that are listed in FM Approvals' "RoofNav" and approved for windstorm classification, Class 1-120. Identify materials with FM Approvals' markings.
- C. SPRI Wind Design Standard: Manufacture and install copings tested according to SPRI ES-1 and capable of resisting the following design pressures:
 1. Design Pressure: Per provided uplift pressures by Garland / DBS Inc.
- D. Thermal Movements: Allow for thermal movements from ambient and surface temperature changes to prevent buckling, opening of joints, hole elongation, overstressing of components, failure of joint sealants, failure of connections, and other detrimental effects. Provide clips that resist rotation and avoid shear stress as a result of thermal movements. Base calculations on surface temperatures of materials due to both solar heat gain and nighttime-sky heat loss.
 1. Temperature Change (Range): 120 deg F (67 deg C), ambient; 180 deg F (100 deg C)

2.2 COPINGS

- A. Metal Copings: R-Mer Edge Copings by The Garland Co.; Manufactured coping system consisting of metal coping cap in section lengths not exceeding 12 ft , concealed anchorage; with corner units, end cap units, and concealed splice plates with finish matching coping caps.
- B. R-Mer Edge Coping Cap Cover and Splice Plate
 1. Zinc-coated steel, ASTM A653, coating designation G-90, in thickness of 24 gauge, 36" to 48" by coil length, chemically treated, commercial or lock-forming quality.
- C. R-Mer Edge Coping Chairs
 1. Zinc-coated steel, ASTM A653, coating designation G-90, in thickness of 0.0635 nom./ 16 gauge, 36" to 48" by coil length, chemically treated, commercial or lock-forming quality.
- D. Corners: Factory mitered and continuously welded
- E. Finishes
 1. Color: To be selected from manufacturer's standard offering.
 2. Exposed surfaces for coated panels:
 - a. Steel Finishes: fluorocarbon finish. Epoxy primer baked both sides, .2-.25 mils thickness as approved by finish coat manufacturer. Weathering finish as referred

by National Coil Coaters Association (NCCA).

PROPERTY	TEST METHOD	FLUOROCARBON*
Pencil Hardness	ASTM D3363 NCCA II-2	HB-H
Bend	ASTM D-4145 NCCA II-19	O-T
Cross-Hatch Adhesion	ASTM D3359	no loss of adhesion
Gloss (60° angle)	ASTM D523	25+/-5%
Reverse	ASTM D2794	no cracking or loss of Impact adhesion
Nominal Thickness	ASTM D1005	
Primer		0.2 mils
Topcoat		0.7 mils min
Clear Coat (optional, only to be used with 22 gauge steel)		0.3 mils

2.3 REGLETS AND COUNTERFLASHINGS

A. Reglets: Manufactured units formed to provide secure interlocking of separate reglet and counterflashing pieces, from the following exposed metal:

1. Formed Aluminum: 0.024 inch (0.61 mm) thick.
2. Corners: Factory mitered mechanically clinched and sealed watertight.
3. Surface-Mounted Type: Provide reglets with slotted holes for fastening to substrate, with neoprene or other suitable weatherproofing washers, and with channel for sealant at top edge.
4. Concrete Type, Embedded: Provide temporary closure tape to keep reglet free of concrete materials, special fasteners for attaching reglet to concrete forms, and guides to ensure alignment of reglet section ends.
5. Masonry Type, Embedded: Provide reglets with offset top flange for embedment in masonry mortar joint.
6. Multiuse Type, Embedded: For multiuse embedment in cast-in-place concrete

B. Counterflashings: Manufactured units of heights to overlap top edges of base flashings by 4 inches (100 mm) and in lengths not exceeding 12 ft designed to snap into reglets and compress against base flashings with joints lapped, from the following exposed metal:

1. Zinc-Coated Steel: Nominal 24 ga thick.

- C. Zinc-Coated Steel Finish: Two coat fluoropolymer.
 - 1. Color: To be selected from manufacturer's standard offering.

2.4 MATERIALS

- A. Zinc-Coated (Galvanized) Steel Sheet: ASTM A653/A653M, G90 (Z275) coating designation.

2.5 UNDERLAYMENT MATERIALS

- A. Self-Adhering, High-Temperature Sheet: Minimum 40 mils thick, consisting of slip-resisting polyethylene-film top surface laminated to layer of butyl or SBS-modified asphalt adhesive, with release-paper backing; cold applied. Provide primer when recommended by underlayment manufacturer.

2.6 MISCELLANEOUS MATERIALS

- A. Fasteners: Manufacturer's recommended fasteners, suitable for application and designed to meet performance requirements. Furnish the following unless otherwise indicated:
 - 1. Exposed Penetrating Fasteners: Gasketed screws with hex washer heads matching color of sheet metal.
 - 2. Fasteners for Aluminum: Aluminum or Series 300 stainless steel.
 - 3. Fasteners for Zinc-Coated (Galvanized) Steel Sheet: Series 300 stainless steel or hot-dip zinc-coated steel according to ASTM A153/A153M or ASTM F2329.
- B. Elastomeric Sealant: ASTM C920, elastomeric polyurethane polymer sealant of type, grade, class, and use classifications required by roofing-specialty manufacturer for each application.
- C. Butyl Sealant: ASTM C1311, single-component, solvent-release butyl rubber sealant; polyisobutylene plasticized; heavy bodied for hooked-type joints with limited movement.
- D. Bituminous Coating: Cold-applied asphalt emulsion complying with ASTM D1187/D1187M.
- E. Asphalt Roofing Cement: ASTM D4586, asbestos free, of consistency required for application.

2.7 FINISHES

- A. Comply with NAAMM's "Metal Finishes Manual for Architectural and Metal Products" for recommendations for applying and designating finishes.
- B. Protect mechanical and painted finishes on exposed surfaces from damage by applying a strippable, temporary protective covering before shipping.
- C. Appearance of Finished Work: Noticeable variations in same piece are unacceptable. Variations in appearance of adjoining components are acceptable if they are within the range of approved Samples and are assembled or installed to minimize contrast.

D. Coil-Coated Galvanized-Steel Sheet Finishes:

1. High-Performance Organic Finish: Prepare, pretreat, and apply coating to exposed metal surfaces to comply with ASTM A755/A755M and coating and resin manufacturers' written instructions.
 - a. Two-Coat Fluoropolymer: AAMA 621. Fluoropolymer finish containing not less than 70 percent polyvinylidene fluoride (PVDF) resin by weight in color coat.
 - b. Concealed Surface Finish: Apply pretreatment and manufacturer's standard acrylic or polyester backer finish consisting of prime coat and wash coat with a minimum total dry film thickness of 0.5 mil (0.013 mm).

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine substrates, areas, and conditions, with Installer present, to verify actual locations, dimensions, and other conditions affecting performance of the Work.
- B. Examine walls, roof edges, and parapets for suitable conditions for roof specialties.
- C. Verify that substrate is sound, dry, smooth, clean, sloped for drainage where applicable, and securely anchored.
- D. Proceed with installation only after unsatisfactory conditions have been corrected.

3.2 INSTALLATION OF UNDERLAYMENT

- A. Self-Adhering Sheet Underlayment: Apply primer if required by manufacturer. Comply with temperature restrictions of underlayment manufacturer for installation. Apply wrinkle free, in shingle fashion to shed water, and with end laps of not less than 6 inches (152 mm) staggered 24 inches (610 mm) between courses. Overlap side edges not less than 3-1/2 inches (90 mm). Roll laps with roller. Cover underlayment within 14 days.
 1. Apply continuously under copings and roof-edge specialties
 2. Coordinate application of self-adhering sheet underlayment under roof specialties with requirements for continuity with adjacent air barrier materials.

3.3 INSTALLATION, GENERAL

- A. Install roof specialties according to manufacturer's written instructions. Anchor roof specialties securely in place, with provisions for thermal and structural movement. Use fasteners, solder, protective coatings, separators, underlayments, sealants, and other miscellaneous items as required to complete roof-specialty systems.
 1. Install roof specialties level, plumb, true to line and elevation; with limited oil-canning and without warping, jogs in alignment, buckling, or tool marks.
 2. Provide uniform, neat seams with minimum exposure of solder and sealant.

3. Install roof specialties to fit substrates and to result in weathertight performance. Verify shapes and dimensions of surfaces to be covered before manufacture.
 4. Torch cutting of roof specialties is not permitted.
 5. Do not use graphite pencils to mark metal surfaces.
- B. Metal Protection: Protect metals against galvanic action by separating dissimilar metals from contact with each other or with corrosive substrates by painting contact surfaces with bituminous coating or by other permanent separation as recommended by manufacturer.
- C. Expansion Provisions: Allow for thermal expansion of exposed roof specialties.
1. Space movement joints at a maximum of 12 ft with no joints within 18 inches of corners or intersections unless otherwise indicated on Drawings.
 2. When ambient temperature at time of installation is between 40 and 70 deg F (4 and 21 deg C), set joint members for 50 percent movement each way. Adjust setting proportionately for installation at higher ambient temperatures.
- D. Fastener Sizes: Use fasteners of sizes that penetrate [wood blocking or sheathing not less than 1-1/4 inches (32 mm) for nails and not less than 3/4 inch (19 mm) for wood screws] [substrate not less than recommended by fastener manufacturer to achieve maximum
- E. Seal concealed joints with butyl sealant as required by roofing-specialty manufacturer.
- F. Seal joints as required for weathertight construction. Place sealant to be completely concealed in joint. Do not install sealants at temperatures below 40 deg F (4 deg C).

3.4 INSTALLATION OF COPINGS

- A. Install cleats, anchor plates, and other anchoring and attachment accessories and devices with concealed fasteners.
- B. Anchor copings with manufacturer's required devices, fasteners, and fastener spacing to meet performance requirements.
 1. Interlock face and back leg drip edges of snap-on coping cap into cleated anchor plates anchored to substrate as required by the manufacturer.

3.5 INSTALLATION OF REGLETS AND COUNTERFLASHINGS

- A. Coordinate installation of reglets and counterflashings with installation of base flashings.
- B. Embedded Reglets: See details on drawings
- C. Surface-Mounted Reglets: Install reglets to receive flashings where flashing without embedded reglets is indicated on Drawings. Install at height so that inserted counterflashings overlap 4 inches (100 mm) over top edge of base flashings.
- D. Counterflashings: Insert counterflashings into reglets or other indicated receivers; ensure that counterflashings overlap 4 inches (100 mm) over top edge of base flashings. Lap

counterflashing joints a minimum of 4 inches (100 mm) and bed with butyl sealant. Fit counterflashings tightly to base flashings.

3.6 CLEANING AND PROTECTION

- A. Clean exposed metal surfaces of substances that interfere with uniform oxidation and weathering.
- B. Clean and neutralize flux materials. Clean off excess solder and sealants.
- C. Remove temporary protective coverings and strippable films as roof specialties are installed. On completion of installation, clean finished surfaces, including removing unused fasteners, metal filings, pop rivet stems, and pieces of flashing. Maintain roof specialties in a clean condition during construction.
- D. Replace roof specialties that have been damaged or that cannot be successfully repaired by finish touchup or similar minor repair procedures.

END OF SECTION 077100



Return this Worksheet To: dbsbids@garlandind.com or (216) 883-2055 (Fax)

Submission of this form acknowledges receipt and acceptance of:

1. All standard Garland details and specifications.
2. Prevailing Wage Rates; if applicable
3. Project specific specifications, drawings, and details.
4. Subcontractor is **only** responsible to insure the value of the non-Garland Materials & Labor.
PLEASE NOTE: The Garland Materials will be purchased directly by the Customer
5. All on-site tradesmen must have a background check and valid I-9 certificates on file. These documents for review upon request.
6. Default payment terms are 2% at 10 days, Net 45 Days
7. DBS will purchase Garland Material based on the material quantities provided herein. Additional Garland Materials or other manufacturer's materials necessary to complete the project will be the Subcontractor's obligation. Please provide breakdown to assist tracking of Non Garland material
8. Workmanship Warranties will **not** extend beyond five (5) years.

Submit with this Project Cost proposal:

1. Garland Material List with all quantities, unit sizes, & coverage rates (Subcontractors are responsible to obtain material lists, data sheets, and product costs from Garland Rep)
2. Any qualifications/exclusion to Subcontractor's price proposal.

Awarded subcontractor must submit:

1. Site Specific Safety Plan and OSHA 300 log.
2. Equipment list and selected Waste Hauler's License (State or Local).
3. Certificate of Insurance – listing Garland/DBS, Inc. and the project Owner as additional insured's.
4. All licenses and permits.
5. Tax exempt status and sales tax requirements.
6. E-Verify Account Information

CONTRACTOR'S NAME:

ADDRESS (CITY, STATE, & ZIP CODE):

TELEPHONE:

CELL:

CONTACT PERSON:

CONTACT E-MAIL ADDRESS:

PROJECT NAME:

ADDRESS (CITY, STATE, & ZIP CODE):

DBS PROPOSAL #:

GARLAND REPRESENTATIVE:

PROJECT SQUARE FOOTAGE:



Return this Worksheet To: dbsbids@garlandind.com or (216) 883-2055 (Fax)

CONTRACTOR'S NAME:

DBS PROPOSAL #:

SUBCONTRACTOR AFFIRMATION:

Does your proposal comply with Garland's standard published application procedures?

YES NO

Does your proposal comply with Garland's standard published details?

YES NO

Is your proposal based upon DBS's Continuing Services Agreement?

YES NO

Is your proposal based upon DBS Inc's General Conditions & Acknowledgements (Page1)?

YES NO

Is your proposal based upon Prevailing Wages?

YES NO

Are you using any subs or material suppliers? If yes, please list all potential below:

YES NO

	<u>Name of Sub/Supplier</u>	<u>Estimated Value</u>
Subs/Suppliers:		

This is for Reference only. Please include all Sub/Material pricing in the breakdown on page 3.

*If more sub/suppliers are needed, please include in a separate attachment.

SUBCONTRACTOR CLASSIFICATION (Check All That Apply):

- Minority Owned Business
- Women-Owned Business (WOB)
- Small Business
- Large Business (None of the Above)
- Alaskan Native Tribal-Owned Business
- Veteran-Owned Business (VOB)
- Service-Disabled VOB
- HUBZone Business
- 8(a) Certified Business
- Native American Tribal-Owned Business



Cleveland, OH 44105



Return this Worksheet To: dbsbids@garlandind.com or (216) 883-2055 (Fax)

CONTRACTOR'S NAME:

DBS PROPOSAL #:

BID BREAKDOWN BY KEY COMPONENTS:

NON-GARLAND ROOF MATERIALS:

ROOFING LABOR:

NON-ROOFING LABOR:

NON-ROOFING MATERIALS:

PERMITS:

SALES TAX - NON-GARLAND MTLs:

TOTAL SUBCONTRACTOR BID PRICE:

GARLAND MATERIALS BY DBS:

SUBCONTRACTOR QUOTE MUST BE GOOD FOR 90 DAYS. IF SUBCONTRACTOR CAN HOLD PRICING FOR LONGER, PLEASE FILL-IN TOTAL NUMBER OF DAYS:

DAYS

PROPOSALS WILL BE EVALUATED ON A COMBINATION OF THE BASE BID PROPOSAL, RESPONSIVENESS TO THE BID DOCUMENTS, AND MARK-UP FOR UNANTICIPATED CHANGE ORDERS, PLEASE PROVIDE YOUR CHANGE ORDER MARK-UPS BELOW:

OVERHEAD

PROFIT

List All Addendums Included:
If applicable



6000 East 91st Street
Cleveland, OH 44105



Return this Worksheet To: dbsbids@garlandind.com or (216) 883-2055 (Fax)

CONTRACTOR'S NAME:

DBS PROPOSAL #:

LINE ITEM PRICING FOR ANTICIPATED UNFORESEEN SITE CONDITIONS:

LINE ITEM DESCRIPTION	PRICE PER UNIT	UNIT SIZE
Wood Blocking (Nailer) Replacement		
Additional Insulation Replacement		
Decking Replacement		

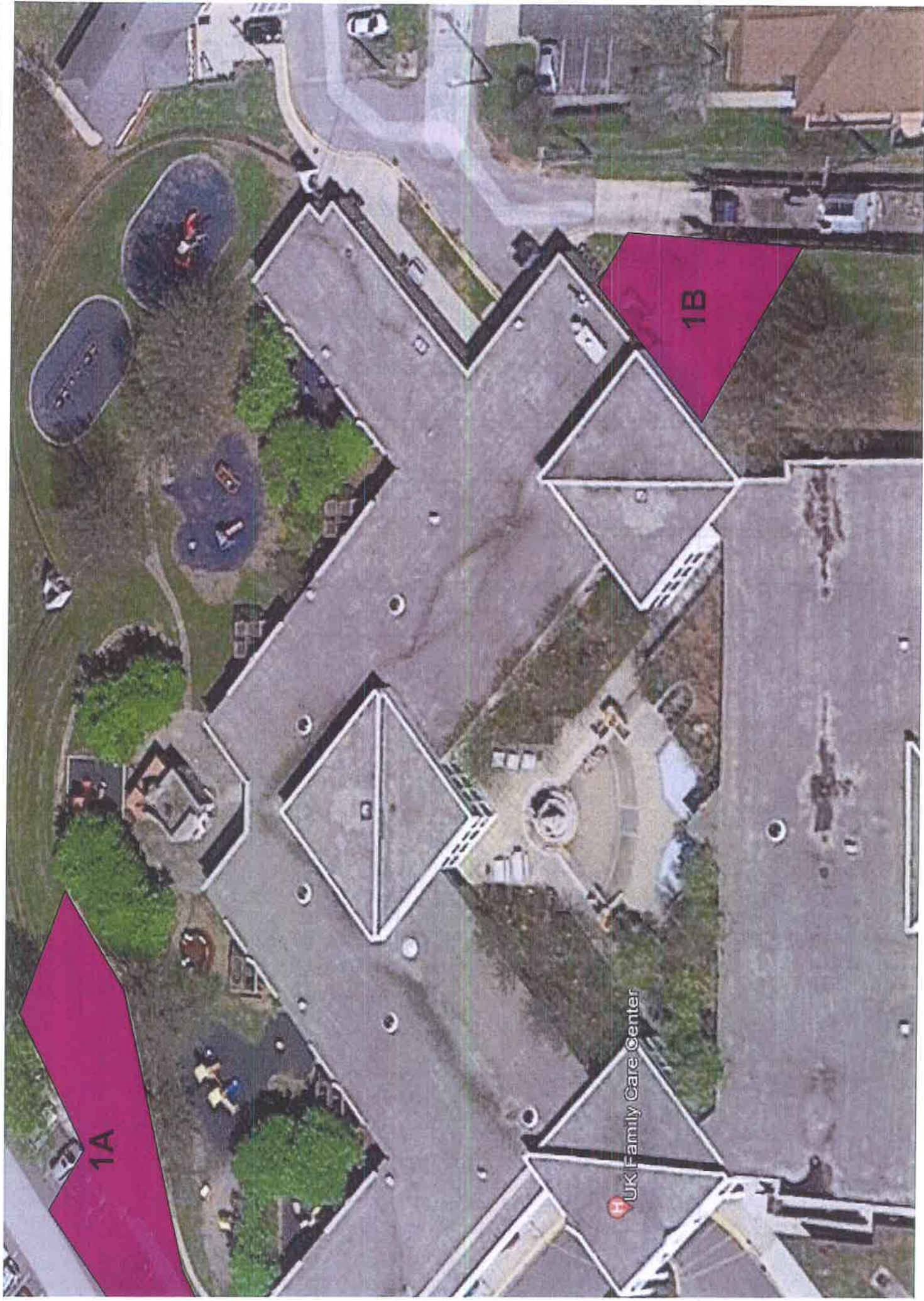
CERTIFICATION OF BID INFORMATION:

I certify that I have reviewed and stand behind our Cost Proposal and Garland material quantities. I have incorporated the application procedures, project details and specifications, Continuing Service Agreement, and insurance requirements, in their entirety, into our cost proposal. This Cost Proposal includes all costs necessary to complete this project.

Contractor Name:

Responsible Party's
Name & Title:

Responsible Party's
Signature:



UK Family Care Center

1A

1B



659B Lakeview Plaza Blvd. • Worthington, OH 43085 • (614)885-3319 • FAX (614)885-4269

June 28, 2021

Lisa Grober
Lexington Fayette Urban County Government
200 East Main St
Lexington, KY 40507

SUBJECT: Thermographic Roof Survey of Family Care Center

Lisa:

The enclosed report concludes the Thermographic Survey of the Family Care Center, 1135 Red Mile Place, Lexington, OH 40504

The Infrared Survey was performed using an AGEMA 550 Thermovision System on the evening of June 24, 2021. The weather during the day was mostly sunny with temperatures in the low 80's. The evening was clear with temperatures in the mid 70's with calm winds.

We found 6 areas of wet insulation during the survey. The perimeter of the wet areas are marked on the roof surface with green spray paint and numbered accordingly.

We took core cuts in wet areas #1, #2 & #5. All cores has saturated insulation (See images A, B & C)

Three of these areas corresponded to areas found in previous survey done in March of 2019.

AREA #	2019 Sq Ft	2021 Sq Ft
(2019) #2 (2021 #3)	107	72
(2019) #4 (2021 #5)	48	108
(2019) #5 (2021 #6)	40	120

We also took images of the brick walls that showed patterns consistent with moisture in the walls. Brick will absorb moisture and as long as there is a proper drainage plane in the wall for the water to exit this may not be an issue.

I want to take this opportunity to thank you for using us for this project and if you have any further questions, please feel free to call.

Cordially,
PEMCo Thermal, Inc.

Tom Martin
President

THERMOGRAPHIC EXAMINATION

A. BACKGROUND

With the advent of thermography, roofs can be scanned with a highly sophisticated infrared camera to detect and accurately map subsurface moisture, thereby determining whether a portion or all of the roof requires replacement. Unlike other non-destructive techniques, thermal scanning assesses every square inch of roofing, including vertical flashings and around and under roof obstructions and equipment. This results in a comprehensive view of the roof's condition, with the possibility of errors virtually eliminated.

B. OBJECTIVE

The objective of this investigation is to identify the areas of subsurface moisture or where moisture has penetrated the membrane and deck structure. Those areas are to be documented with roof markings and correlated on a roof map with real-life and infrared photos.

C. TECHNICAL APPROACH

Due to the limited size of the roof, the thermographic survey was conducted by hand carrying the specialized equipment over the roof. Thermography or infrared scanning is based upon the ability of a specialized infrared camera to detect variations in temperature radiating from the roof surface and convert them into an electrical signal which is displayed instantaneously as a video image called a thermogram. This picture is displayed in a color tone similar to the image received on a color television set. The difference in tones, darker colors to lighter colors denotes variation in the roof's surface temperature of .02 C or more and is influenced by the moisture content of the insulation.

Under clear skies during the day, the roof acts as a large thermal collector, and can approach 160 F during the summer months. Any insulation laden with subsurface moisture absorbs this radiation and acts as a reservoir to regenerate the heating of the membrane after the solar effect has dissipated. The effect of wet and dry insulation on the surface temperature of the membrane is also a result of emissive cooling. This is heat loss from the roof as much as 15 C below ambient. In cooler weather, the introduction of moisture reduces the R-Value of the assembly, producing thermal bridges. These are localized warm zones which also produce lighter colored images on the thermograms.

When an abnormality on the thermogram appears, usually as a lighter colored area, it can be interpreted to be either wet or at one time wet and has lost some of its original quality of texture and strength. The outline of these areas is marked on the surface of the roof with spray paint: in some areas only a number is painted, as these areas had no definite pattern or the roof is completely wet.



Infrared Roof Inspection Prepared for

Lexington Fayette Urban County Government
200 East Main St
Lexington, KY 40507

DATE: June 24, 2021

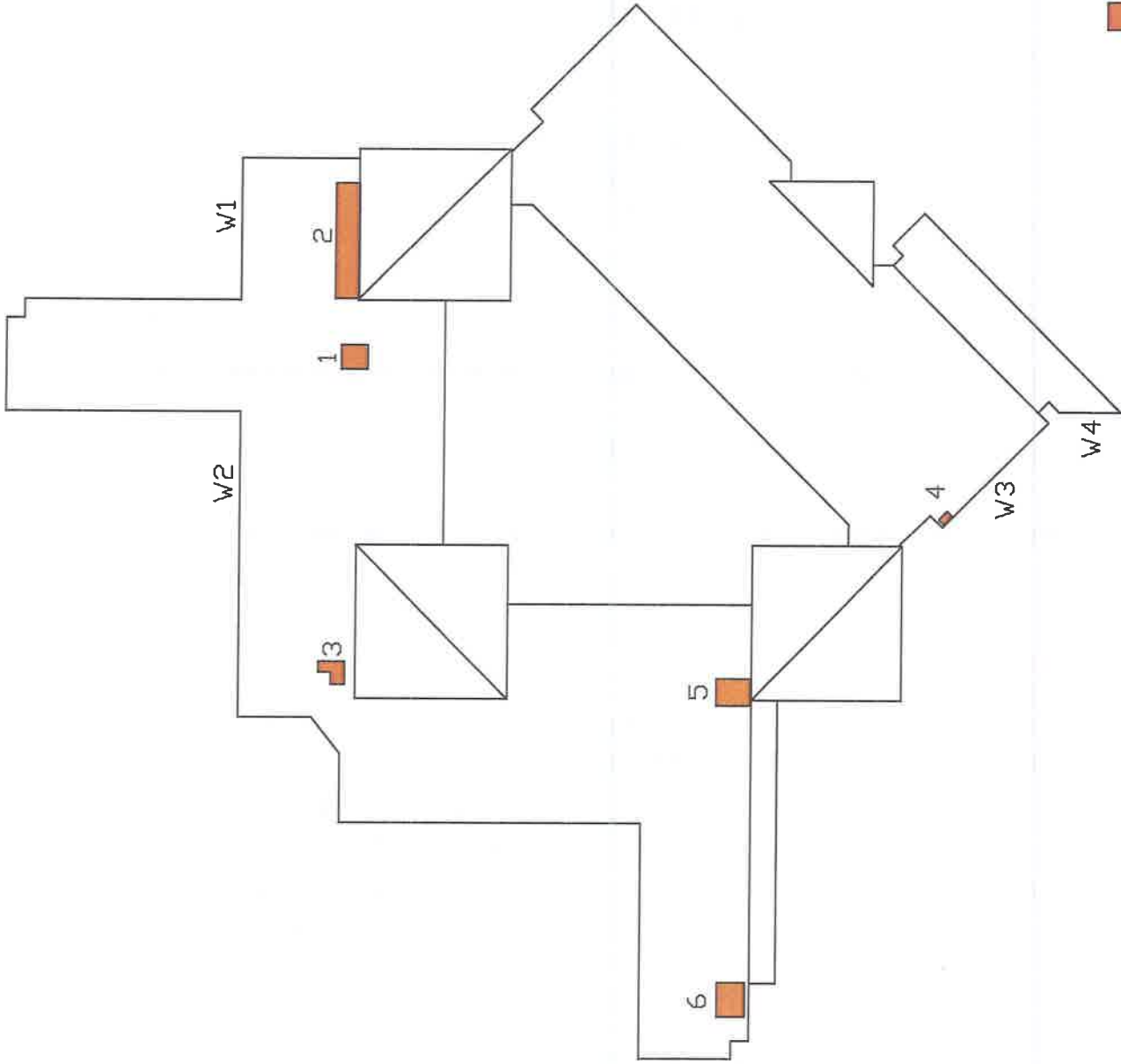
PROJECT: Family Care Center

I hereby certify that the above listed project was thermogrammed by myself or under my direction and that the photographs, data and analysis are the result of the survey.

Tom Martin

Infrared Consultant

SPECIAL NOTES



Wet Insulation



Date: 6/24/2021

1135 Red Mile Place
Lexington, OH 40504

Scale
1" = 60'
(approx)

Family Care Center

PEMCo THERMAL, INC. • INFRARED CONSULTANTS
 639-B LAKEVIEW PLAZA BLVD • WORTHINGTON, OH 43085 • PHONE: 614-885-3319 • E-MAIL: tmartin@pemcothermal.com

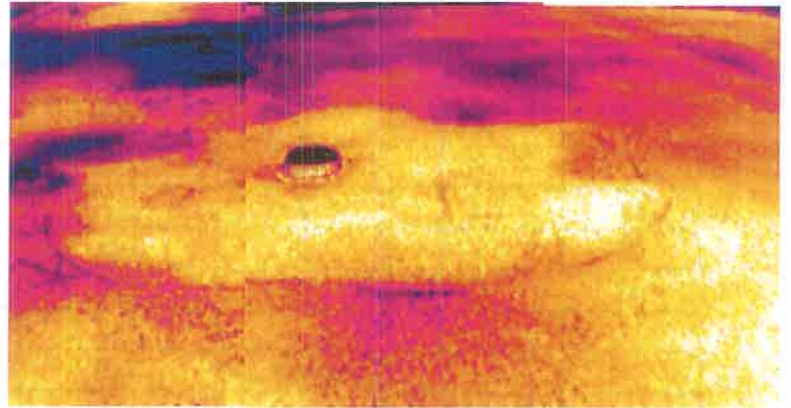
FAMILY CARE CENTER

Estimated Areas of Wet Insulation

AREA	DIMENSIONS		SIZE (sq. ft.)			
	LENGTH	WIDTH				
#1	9	8	72			
#2	40	9	360			
#3	9	8	72			
#4	4	3	12			
#5	12	9	108			
#6	12	10	120			
		Total Sq. Ft.	744			



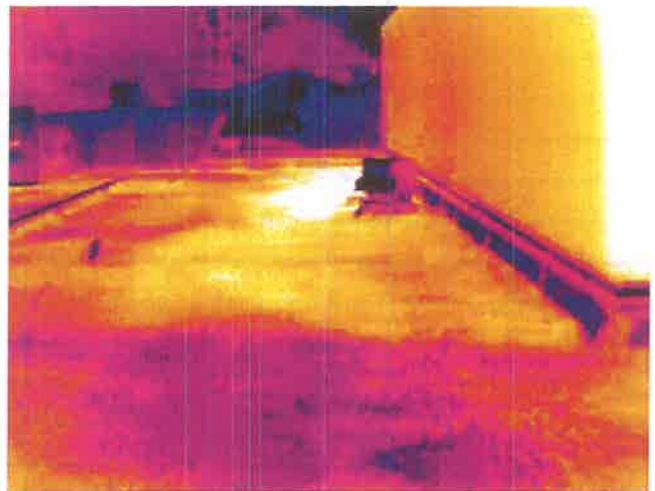
Visual image of area #1



Infrared view of area #1



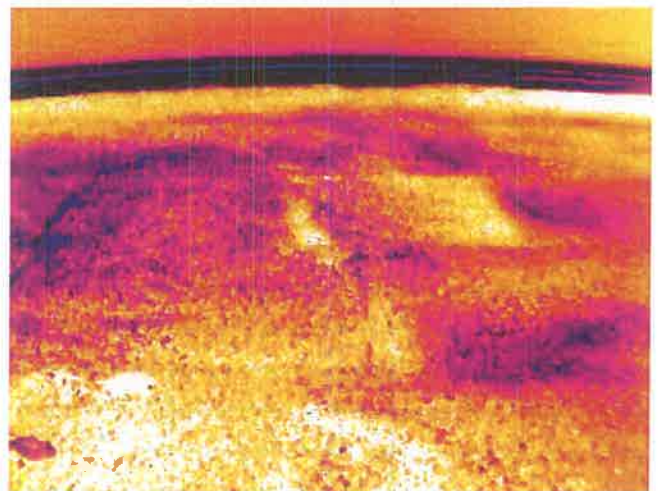
Visual image of area #2



Infrared view of area #2



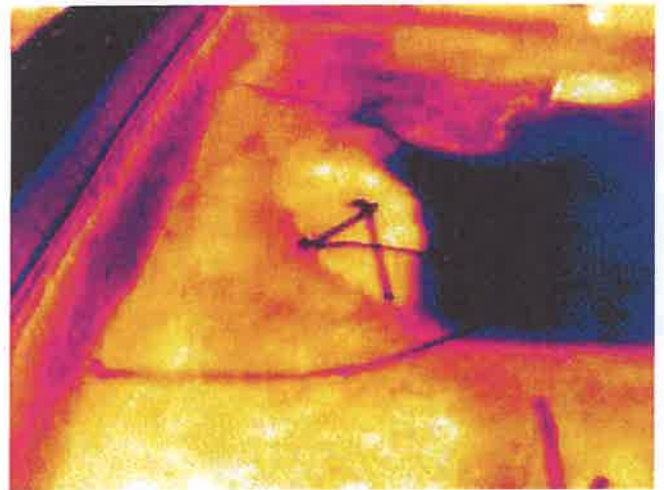
Visual image of area #3



Infrared view of area #3



Visual image of area #4



Infrared view of area #4



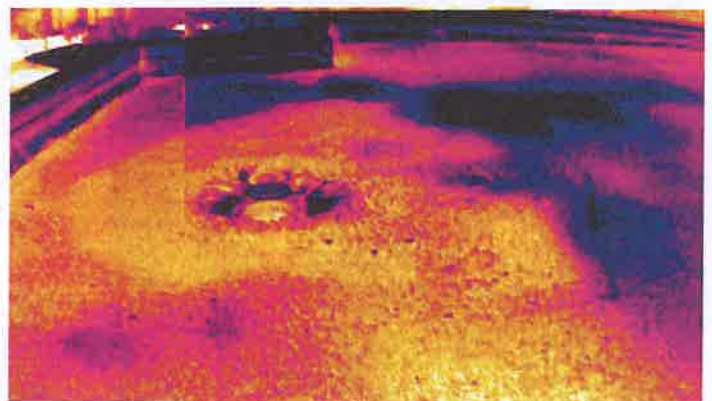
Visual image of area #5



Infrared view of area #5



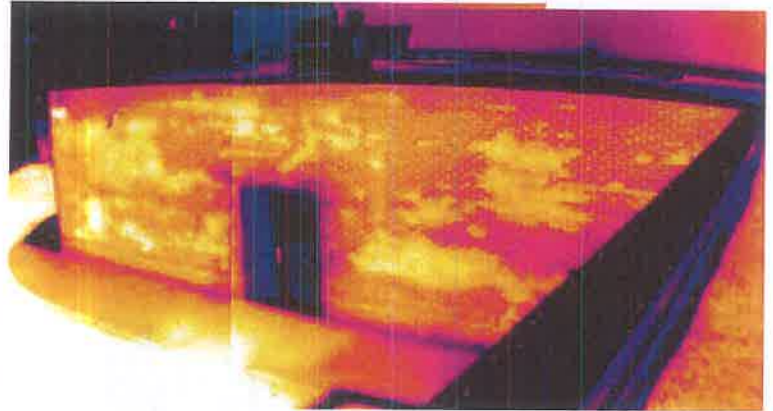
Visual image of area #6



Infrared view of area #6



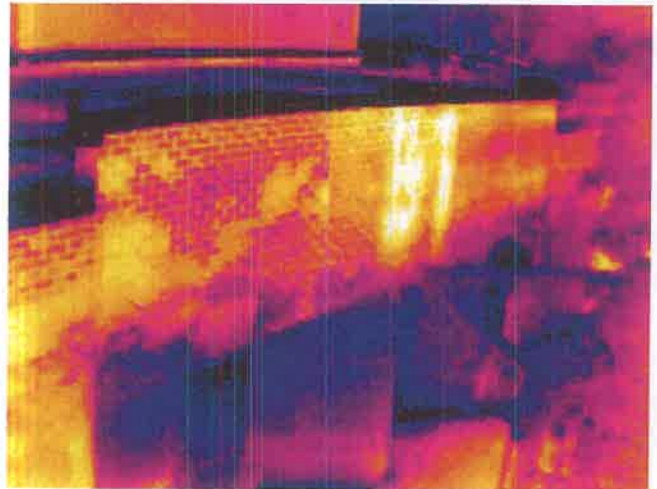
Visual image of area #W1



Infrared view of area #W1



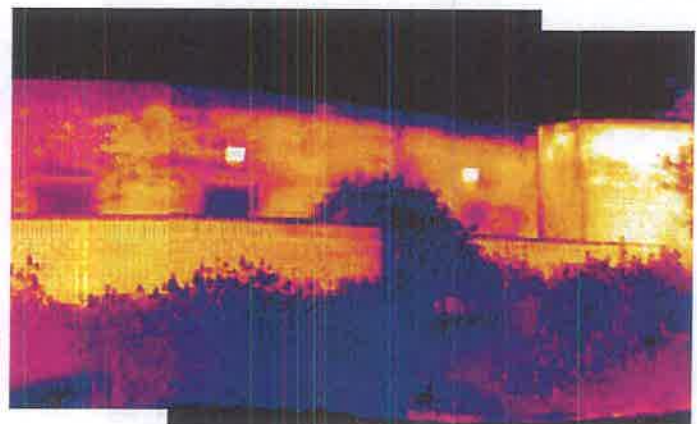
Visual image of area #W2



Infrared view of area #W2



Visual image of area #W3



Infrared view of area #W3



Visual image of area #W4



Infrared view of area #W4



A) Area #1 Core Cut -Saturated Fiberboard Insulation



B) Area #2 Core Cut -Saturated Perlite Insulation



C) Area #5 Core Cut -Saturated Fiberboard Insulation

**CONTINUING SERVICES AGREEMENT
BETWEEN CONTRACTOR AND SUBCONTRACTOR
FOR PROJECTS**

THIS AGREEMENT made this 14th day of January, 2020 between

CONTRACTOR: **Garland/DBS, Inc.**
3800 East 91st Street
Cleveland, OH 44105

SUBCONTRACTOR: **Contractor**
Address
Address

DBS SUBCONTRACT NO: **1-14-2020**

This Continuing Services Agreement constitutes the entire agreement and understanding between the parties with respect to ALL documents incorporated herein, and supersedes all prior representations and agreements. It shall not be varied except by an instrument in writing of subsequent date duly executed by authorized representatives of the parties.

The term of the Agreement shall be one (1) year following the proper execution of the Agreement. This Agreement may be extended for additional one (1) year terms upon the written consent of the parties.

Subcontractor shall perform only as authorized by Purchase Orders issued by Contractor. Specific terms and conditions for the applicable Project/Sub-project will be incorporated in the Purchase Order. There is no limit on the number of Purchase Orders that Contractor may issue. All Purchase Orders issued hereunder are subject to the terms and conditions of this Agreement. Task Orders may be modified in accordance with the Article entitled CHANGES.

Any Purchase Order issued but not completed during the term of this Agreement shall be completed by the Subcontractor within the time specified in the Purchase Order. This Agreement shall govern the parties' rights and obligations with respect to that Purchase Order to the same extent as if the Purchase Order were completed during the Agreement's term.

All notice to the parties shall be given at the above addresses.

**ARTICLE 1
DEFINITIONS**

- 1.1 **Agreement:** means this continuing services contract and general conditions for the completion of Contractor's minor construction projects where the basis of payment is the cost of the work plus Subcontractor's overhead and profit, not to exceed twenty (20%) percent, unless a lump sum price is agreed to in the Project Purchase Order.
- 1.2 **Architect/Engineer:** means the licensed architect, architect/engineer or engineer, and its consultants, retained by Contractor to perform design services for the Project on behalf of Contractor.
- 1.3 **Change Order:** means work, or performance schedule criteria that is different from the original scope-of-work.

- 1.4 Contract Documents: consist of this Agreement, the drawings, specifications, exhibits, attachments and Contractor issued Purchase Orders as they relate to the Work.
- 1.5 Contractor: is the independent contractor person or entity identified in this Agreement and includes Contractor's Representative.
- 1.6 Day: means workday during Contractor's normal hours of operation unless otherwise specifically defined.
- 1.7 Defective Work: is any portion of the Work that is not in conformance with the Contract Documents.
- 1.8 Hazardous Conditions: means the presence of any Hazardous Materials or the existence of any condition which may violate the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq., or any other applicable federal, state, or local health or safety law, ordinance, or regulation.
- 1.9 Hazardous Materials: means, without limit, any oil, petroleum products, flammable explosives, mold, asbestos, urea formaldehyde, polychlorinated biphenyls, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" or related materials defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), The Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), The Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 9601, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state, or local environmental law, ordinance, rule or regulations.
- 1.10 Material Supplier: is a person or entity retained by Contractor and/or Subcontractor to provide material and/or equipment for the Work.
- 1.11 Others: means other contractors, material suppliers and persons at the Work Site who are not employed by Contractor and/or Contractor's subcontractors.
- 1.12 Owner: is the person, or entity that owns the real property at the Work Site for which the work is being performed, which includes the Owner's Representative.
- 1.13 Contractor's Project Criteria: the scope-of-work developed by or for Owner, describing the Contractor's design and construction requirements and objectives for the Project, including budgetary and time constraints, submittal requirements and other requirements governing Subcontractor's performance of the Work. Contractor's Project Criteria may include conceptual estimates, conceptual schedule and other Project-specific technical materials and requirements needed to define the scope-of-work.
- 1.14 Project: is the project and/or subproject scope-of-work defining the improvements required by Owner, including budgetary and time criteria as issued by individual Purchase Order from Contractor for which Subcontractor is to perform Work under this Agreement.
- 1.15 Performance Schedule: is the document prepared by Contractor that specifies the dates on which Subcontractor plans to begin and complete various parts of the Work, including dates which information and approvals are required from Owner.
- 1.16 Subcontractor: is a person or entity retained by Contractor pursuant to this Agreement as an independent contractor to provide labor, materials, equipment and/or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the architect/engineer.

- 1.17 Substantial Completion: the date when the Work is sufficiently complete in accordance with the Contract Documents so it can be used or utilized by Owner for its intended purpose.
- 1.18 Sub-subcontractor: is a person or entity that has an agreement with a Subcontractor to perform any portion of the Work.
- 1.19 Work: means all planning, design, construction and other services necessary or incidental to fulfill the scope-of-work defined by Contractor's individual Purchase Order for a specific Project in accordance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the Owner or Others. The Agreement applies design responsibility to Subcontractor only when design elements are specifically identified in the scope-of-work on the Purchase Order as part of Subcontractor's performance. Otherwise, Subcontractor is not responsible for the design.
- 1.20 Work Site: means the location where the Work is to be performed.

ARTICLE 2 GENERAL PROVISIONS

- 2.1 Contractor and Subcontractor agree to furnish its best skill and judgment and to proceed with the Projects on the basis of mutual trust, good faith and fair dealing. Contractor and Subcontractor shall endeavor to promote harmony and cooperation among all Project participants.
- 2.2 Subcontractor agrees to comply with all required licenses, permits and inspections as required by the authority having jurisdiction over the Work.
- 2.3 Subcontractor represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor.
- 2.4 Neither Subcontractor nor any of its agents or employees shall act on behalf of or in the name of Contractor or Owner except as provided in the Agreement or unless authorized in writing by Contractor's Representative.
- 2.5 Contractor and Subcontractor will work as a team through the planning and construction phases of the Project.
- 2.6 All Subcontractor records pertaining to the Project shall be retained and made available for audit by Contractor or Owner, before, during and for up to five (5) years after completion of the Project.
- 2.7 Where this Agreement is silent, the requirements of the plans and specifications will prevail. This Agreement may be amended only by written instrument signed by Contractor and Subcontractor.
- 2.8 All Contract Documents related to the Purchase Order, any Change Order to the Purchase Order, the Purchase Order, and any correspondence related to the Work, shall be identified by the Subcontract Number for this Agreement.

ARTICLE 3 PAYMENT

- 3.1 Subcontractor's services under the Agreement shall include all labor, tools, materials, equipment and all other incidentals to fulfill the scope-of-work defined by Contractor's individual Purchase Order(s), with workmanship of the highest quality by industry standards. The Purchase Order(s) shall be considered part of the Contract Documents. Subcontractor shall submit a cost proposal

for each Project. Should Contractor and Subcontractor not reach a Price agreement on any Project, Contractor reserves the right to cease negotiations with Subcontractor for that Project and perform the work by other means without affecting this Agreement or any other Project.

- 3.2 Contractor shall administer design and construction management phase services as provided by the Contract Documents and the Purchase Order.
- 3.3 If the Project involves construction of a public improvement at a cost exceeding the threshold for payment of prevailing wage rates of pay or as otherwise required by law, each laborer, workman or mechanic employed by Contractor or Subcontractor for performance of the Work shall not be paid less than the minimum rate of pay for the applicable pay classification. When Contractor or Subcontractor is subject to the requirements of paying prevailing wages, it shall keep full and accurate payroll records covering all disbursements of wages to employees whom it is required to pay not less than the prevailing rate of wages. Subcontractor shall deliver to Contractor a certified copy of its payroll for each pay period during its performance of the Project.
- 3.4 For each Project, Subcontractor shall commence Work within ten (10) working days after receipt of the Purchase Order as authorization of Notice to Proceed from Contractor. Subcontractor shall submit for Contractor's review and approval a schedule-of-values for all of the Project Work. The Schedule-of-Values will: (a) subdivide the Work into its respective parts, (b) include values for all items comprising the Work, including but not limited to general conditions, and (c) serve as the basis for progress payments made to Subcontractor throughout the Work.
- 3.5 On or before the 25th day of the month, Subcontractor shall submit for Contractor's review and approval, its Application for Payment requesting payment for all Work performed and projected through to the end of the month. The Application for Payment shall be accompanied by an updated Schedule-of-Values. Any Subcontractor Application and Certification for Payment received by Contractor after the 25th of the month shall not be processed for payment until the next month's pay application submission to Owner. Notwithstanding anything to the contrary in the Contract Documents, Contractor shall pay Subcontractor all undisputed amounts in an Application for Payment no later than the 45th day following the receipt of a properly completed and submitted Application for Payment.
- 3.6 The Application for Payment may not request payment for equipment and materials not yet incorporated into the Project.
- 3.7 Subcontractor shall not bill for defective work until the work has been re-inspected and accepted by Contractor.
- 3.8 The Application for Payment shall constitute Subcontractor's representation that the Work has been performed consistent with the Contract Documents; and has progressed to the point indicated in the Application for Payment.
- 3.9 Payment hereunder will not be evidence of or construed to be proper performance or progress of the Work or acceptance of the Work.
- 3.10 On or before the dates established in Sections 3.4 and 3.5 of this Agreement, Contractor shall pay Subcontractor all amounts properly due. If Contractor determines that Subcontractor is not entitled to all or part of an Application for Payment, Contractor will notify Subcontractor in writing prior to the date payment is due. The notice shall indicate the specific amounts Contractor intends to withhold, the reasons and contractual basis for the withholding, and the specific measure Subcontractor must take to rectify Contractor's concerns. Subcontractor will attempt to resolve Contractor's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Contractor may pursue its rights under the Contract Documents.

omissions of Owner or anyone not under Contractor's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, fires, floods, labor disputes, unusual delay in transportation, epidemics, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

- 4.3 Owner Caused Delay: Contractor shall not be obligated or liable to Subcontractor for payment or extension of time due to Owner caused delays beyond the extent of recovery by Contractor from Owner in the form of a properly executed Change Order in accordance with Article 5 of the Agreement.
- 4.4 Subcontractor shall notify Contractor when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially completed. Within five (5) days of Contractor's receipt of Subcontractor's notice, Contractor and Subcontractor will jointly inspect such Work to verify that it is substantially completed in accordance with the Contract Documents and prepare Contractor's Punch-List to Subcontractor. The Work will be deemed Substantially Complete when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so it can be occupied or utilized for its intended purpose by Owner. If Contractor determines that such Work is substantially completed, Subcontractor shall submit its Final Application for Payment.
- 4.5 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Contractor shall release Subcontractor all retained amounts related, as applicable, to the entire Work or completed portion of the Work, less any amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Contractor's Punch-List to Subcontractor.

ARTICLE 5 CHANGES TO THE CONTRACT PRICE AND TIME

- 5.1 A Change Order to a Purchase Order is a written instrument issued after execution of this Agreement signed by Owner and Contractor, stating their agreement upon all of the following:
- .1 The scope of the change in the Work.
 - .2 The amount of the adjustment to the Contract Price.
 - .3 The extent of the adjustment to the Contract Time(s).
- 5.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Contractor and Subcontractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.
- 5.3 Subcontractor must seek approval from Contractor before performing any or any addition to the Work. The Contractor must provide Subcontractor written documentation of the modification to the Purchase Order within three (3) business days of verbal approval from Contractor that the modification constitutes a change to the Work. Subcontractor is not obligated to perform additional work until written modification has been received from Contractor, but may commence work based upon a reasonable assumption that a Change Order will be issued.
- 5.4 No claims for a Change Order or extra work to the Contract Price shall be valid unless so authorized.
- 5.5 The increase or decrease in the Purchase Order/Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:
- .1 Unit prices subsequently agreed to between the parties.

- 3.11 If Contractor fails to pay Subcontractor any undisputed amount that becomes due, Subcontractor, in addition to all other remedies provided in the Contract Documents or at law, may stop Work after providing proper notification to the Contractor that a problem exists. Proper notification shall be defined as written notice, served by certified mail to Contractor, defining the problem that exists and Subcontractor's intent to stop work. If Contractor does not cure the problem within a five (5) day period, Subcontractor must provide Contractor with another written notice, served by certified mail to Contractor, of Subcontractor's intent to stop work. If Contractor does not cure the problem within an additional three (3) day period, Subcontractor may stop work. In such case, Subcontractor may be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage, provided that Contractor is solely responsible for failure to make payment to Subcontractor.
- 3.12 Subcontractor shall not stop work for reason of payments withheld in whole or in part, for failure of Contractor to make payment to Subcontractor for applications for payment submitted after the 25th of the month, or for disputes as identified in Article 13.
- 3.13 Subcontractor shall not stop work for reason of payments withheld in whole or in part for extra work performed by Subcontractor without a properly executed Change Order to the Purchase Order, provided all other undisputed amounts owed for the extra work are timely paid by Contractor.
- 3.14 As a condition for payment and in addition to Contractor's receipt of a Final Application for Payment for the Project, Subcontractor shall provide the following information:
- .1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which in any way affect Contractor's interests.
 - .2 A general release executed by Subcontractor waiving, upon receipt of final payment by Subcontractor, all claims, except those claims previously made to Contractor and remaining unsettled at the time of final payment.
 - .3 If applicable, consent of Subcontractor's surety to final payment.
 - .4 All operating manuals, warranties and other deliverables required by the Contract Documents.
- 3.15 The acceptance by Subcontractor of the final payment under a Purchase Order or this Agreement shall constitute and operate as a release to Owner for all claims and liabilities for payment to Subcontractor, its representatives, subcontractors, and assigns as well as for any additional compensation or payment related to any and all things done or furnished with respect to the services rendered by Subcontractor under, or in connection with, the Purchase Order or this Agreement. However, final payment shall in no way relieve Subcontractor of liability for its obligations or for faulty or defective work discovered after final payment. The final payment shall be due within forty (40) days after all of the conditions precedent required under this section have been satisfied.

ARTICLE 4 TIME

- 4.1 Subcontractor agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with the Purchase Order. Subcontractor agrees to the Contract Time(s) that are provided in the Purchase Order upon the execution or acceptance of the Purchase Order.
- 4.2 If Subcontractor is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control, the Contract Time(s) for performance shall be reasonably extended by Change Order to the Purchase Order. By way of example, events that will entitle Subcontractor to an extension of the Contract Time(s) include, but are not limited to, acts or

- .2 Lump sum price, mutually agreed to between the parties.
- .3 Cost, fees, and other markups mutually agree to between the parties.
- 5.6 In any emergency affecting the safety of persons and/or property, Subcontractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Purchase Order/Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 5.5.
- 5.7 Change Orders shall be prepared by Subcontractor and submitted to Contractor along with backup documentation to include, but not limited to, material, labor, equipment, tools, taxes, insurance, and all incidentals to provide a complete and working system.
- 5.8 Contractor shall be the only party authorized to request Subcontractor to perform extra Work in accordance with Article 5 of this Agreement. Except as provided in Paragraph 5.3 above, any extra work performed by Subcontractor prior to receiving a properly executed Change Order shall be considered incidental and no adjustments will be made to the Purchase Order Price and/or Time.
- 5.9 If Contractor and Subcontractor disagree upon whether Subcontractor is entitled to be paid for any services required by Owner, or if there are any other disagreements over the Scope-of-Work or proposed changes to the Work, Contractor and Subcontractor shall resolve the disagreement pursuant to Article 13 hereof.

ARTICLE 6 LEGAL REQUIREMENTS

- 6.1 Subcontractor shall perform the Work in accordance with all applicable statutes, regulations, and ordinances of any federal, state, or local governmental regulatory agency, commission, bureau, authority, or court (the "Legal Requirements") and shall provide all notices applicable to the Work as required by the Legal Requirements. If Subcontractor discovers the prescribed Work is not in accordance with codes, Subcontractor will promptly notify Contractor and await direction from Contractor and Design Professional. Subcontractor is not responsible for the design, including design errors or omissions, unless the Purchase Order so provides.
- 6.2 Subcontractor and its sub-subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirements. Subcontractor will immediately report any safety-related injury, loss, damage or accident arising from the Work to the extent mandated by Legal Requirements, to Contractor and all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 6.3 Subcontractor shall conform to the requirements as designated by the United States Federal Government, Occupational Safety and Health Administration (O.S.H.A).
- 6.4 By signing this Agreement, Subcontractor certifies that that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, state or local government department, agency or entity.
- 6.5 To ensure equal employment opportunity in accordance with applicable state and federal laws, Subcontractor agrees to prohibit employment discrimination against employees and applicants based on race, color, age, disability, religion, sex (including gender identification and sexual harassment), sexual orientation, national origin, military status or veteran status.

- 6.6 This Agreement is executed in the state where Contractor's office set forth on page one is located and will be interpreted in accordance with the laws of the state where the Work is performed.

**ARTICLE 7
GOVERNMENT COMPLIANCE, APPROVALS AND PERMITS**

- 7.1 Subcontractor shall give notices, pay all fees, permits and comply with all laws, ordinances, rules and regulations bearing on the conduct of work, except as provided in Paragraph 6.1 above.
- 7.2 Subcontractor shall obtain and pay for all government charges and inspection fees required for the execution of the Work by any government or quasi-government entity having jurisdiction over the Project. Contractor shall reimburse Subcontractor for direct costs associated with obtaining such government charges and inspection fees.
- 7.3 All state and local licenses will be required by Subcontractor and its sub-subcontractors prior to commencement of the Work. Subcontractor shall provide Contractor with a current copy of all licenses at the time the Purchase Order is executed.
- 7.4 Subcontractor must comply with all state, federal and local taxes. Subcontractor accepts sole and exclusive responsibility for any and all state and federal taxes with respect to Social Security, old age benefits, unemployment benefits, withholdings taxes, sales taxes, and worker's compensation premiums.
- 7.5 If the Purchase Order is funded in whole or part by a Federal Emergency Management Agency (FEMA) or U.S. Department of Housing and Urban Development (HUD) grant, Subcontractor shall comply with all federal laws and regulations applicable to the receipt of FEMA/HUD grants, as set forth in the FEMA Standard Terms and Conditions for Contracts and Grants Addendum or the Community Development Block Grant Addendum attached to this Agreement.

**ARTICLE 8
SUBCONTRACTOR'S RESPONSIBILITIES**

- 8.1 Unless otherwise provided in the Contract Documents imputing the responsibility to Owner, a separate contractor or others, Subcontractor shall provide through itself the necessary supervision, labor, inspections, material, equipment, machinery, and temporary facilities to permit Subcontractor to complete the Project consistent with the Contract Documents.
- 8.2 Subcontractor shall abide by all rules created by Owner. Subcontractor must contact Contractor for specific information regarding the rules governing all operations of the Project.
- 8.3 Subcontractor acknowledges receipt of the Contract Documents, to include but not necessarily limited to the Purchase Order, Project Manual, and/or plans and specifications.
- 8.4 The Project Manual shall contain Supplemental Conditions that are job specific and incorporated as a contract document by reference to this Agreement.
- 8.5 Subcontractor accepts responsibility for the visual inspection of conditions that could affect Subcontractor's Work at the Work Site, and based on that inspection acknowledges its responsibility to satisfactorily perform the Work without additional expense to Contractor. Subcontractor shall promptly report any discrepancies between its observations and the Contract Documents to Contractor.
- 8.6 Subcontractor shall perform all construction activities efficiently. Subcontractor shall supply trained workers with the requisite expertise, skill and competence, in proper numbers, including

scheduling and laying out the Work, so that the Work will be started and completed in a professional manner to satisfy the requirements of the Contract Documents.

- 8.7 Subcontractor shall be solely responsible for the accuracy of all measurements and for estimating the material quantities required to satisfy the Contract Documents, plans and specifications. Drawings provided are for reference only, quantities must be field verified prior to providing Subcontractor's pricing to Contractor.
- 8.8 All temporary site facilities, such as storage sheds, water, heat, light, power, toilets, hoists, elevators, scaffolding, cold weather protection, ventilation, pumps, watchman service, etc., required in performing the Work will be furnished by Subcontractor unless otherwise provided for by Contractor and identified in the Contract Documents.
- 8.9 In connection with its furnishing of temporary facilities indicated, Contractor shall not be liable for conditions beyond the control of Contractor, which may interrupt, delay or otherwise interfere with the availability of such facilities to Subcontractor. Unless otherwise expressly indicated, the temporary facilities furnished by Contractor will not be for the exclusive use of Subcontractor, but will be shared by others performing Project work. Contractor, therefore, reserves the exclusive right to schedule the use of any facilities in accordance with its determinations as to the needs of the Project, and will incur no liability as a result thereof.
- 8.10 If either party from time to time furnishes the other a crane, hoisting equipment or other machinery or equipment, with or without an operator, for such party's exclusive use, then the using party will at all times furnish adequate and competent supervision and direction therefore and will be fully liable and responsible for safe and proper care, use and custody of such machinery and equipment.
- 8.11 Subcontractor assumes responsibility for proper performance of the Work by Subcontractor's employees, vendors and sub-subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create legal or contractual relationship between Contractor and any vendor, equipment provider, material supplier or sub-subcontractor, including but not limited to any third party beneficiary rights.
- 8.12 Subcontractor shall not subcontract any of the Work without prior written approval from Contractor.
- 8.13 Subcontractor shall coordinate the activities of all employees of Subcontractor and its sub-subcontractors. If Contractor performs other work on the Project or at the Work Site with separate subcontractors under Contractor's control, Subcontractor, under Contractor's direction, agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 8.14 Subcontractor shall keep the Work Site reasonably free from construction materials not incorporated into the Work, debris, trash and construction waste to permit Subcontractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon completion of the day's Work, Subcontractor shall remove all debris, trash, construction waste, materials, equipment, machinery and tools arising from the Work or applicable portion thereof to permit Owner the use of the Project for its intended purpose.
- 8.15 Upon completion of the Work under this Agreement, Subcontractor shall promptly remove all its debris, trash and construction waste from and about the Work Site, as well as its tools, construction equipment, machinery and surplus materials as to leave the Work Site "Broom Clean" or its equivalent.

- 8.16 If the Subcontractor refuses at any time to remove the debris and left over construction materials from the premises, or to keep the working area clean, such cleaning and disposal will be completed by Contractor and deducted from the balance due to Subcontractor.
- 8.17 All materials shall be stored and protected against weather, vandalism, and theft. Except to the extent caused by Contractor or separate subcontractors under Contractor's control.
- 8.18 Contractor will not be liable or responsible for loss or damage to the equipment, tools, facilities, scaffolds or other personal property owned, rented or used by Subcontractor, or its agents, employees or servants, in the performance of the Work. Subcontractor will maintain such insurance and will take such protective action as it deems desirable with respect to such property. Subcontractor will be responsible for the correction or restoration of any such loss or damage to the Work or to the work of Contractor or any of the Contractor's other subcontractors, resulting from the operations or activities of Subcontractor, or its subcontractors, agents, employees or servants hereunder. This Section 8.18 will be included in the subcontract agreements of all of the Contractor's other subcontractors involved in the Work, providing the Subcontractor with reciprocal protection from any of the other contractors on-site. If Subcontractor's Work or its equipment, tools, facilities, scaffolds or other personal property owned, rented or used by Subcontractor, or its agents, employees, or servants, in the performance of the Work suffers a loss or is damaged due to the fault of the Contractor's other subcontractor(s), Contractor shall fully enforce its contractual right against the responsible subcontractor(s) and transfer the benefit(s) from any claim(s) or back charge(s) against the responsible subcontractor(s) directly to Subcontractor to the extent that the benefits relate to damages incurred by the Subcontractor.
- 8.19 Subcontractor shall take necessary precautions to protect the Work of others from loss or damage. Should Subcontractor cause damage to the Work or property of the Owner, Contractor or others, Subcontractor shall promptly remedy such damage to the satisfaction of Contractor, or, if Subcontractor fails to do so, Contractor may remedy the damage and deduct its cost from any amounts due or to become due Subcontractor, unless such costs are recovered under applicable property insurance. This Section 8.19 will be included in the subcontract agreements of all the Contractor's other subcontractors involved in the Work, providing Subcontractor with reciprocal protection from any of the other contractors on-site.
- 8.20 Subcontractor shall protect all grounds, copings, pavings and exterior of all buildings where the Work will be performed.
- 8.21 Subcontractor shall protect Owner's facility from water infiltration. Damage caused by water infiltration resulting from the failure of Subcontractor to secure each day's work in a weather tight manner, will be corrected at Subcontractor's expense. Included as damages will be all labor costs incurred by Owner as a result of such water infiltration. Subcontractor shall not be responsible for damages due to events of Force Majeure or non-Project-related causes of loss covered by the applicable Builder's Risk Insurance Policy, Contractor's Installation Floater or the Owner's Property Insurance. Subcontractor will be responsible for the deductible(s) of any Builders' Risk Insurance Policy, Contractor's Installation Floater or the Owner's Property Insurance claims for damages the extent that the damages were caused by Subcontractor.
- 8.22 Contractor may direct Subcontractor to uncover portions of Subcontractor's Work for inspection by Contractor at any time. Subcontractor is required to uncover such work whether or not Contractor or Owner had requested to inspect Subcontractor's Work prior to it being covered. Except as provided in the paragraph above, this Agreement shall be adjusted by Change Order for the cost and time of uncovering and restoring any work which is uncovered for inspection and proves to be installed in accordance with the Contract Documents, provided Contractor had not previously instructed Subcontractor to leave the work uncovered. If Subcontractor uncovers work pursuant to a directive issued by Contractor, and such work upon inspection does not comply with the Contract Documents, Subcontractor shall be responsible for all costs and time of uncovering, correcting and restoring the work so as to make it conform to the Contract Documents. If

Contractor or some other entity for which Subcontractor is not responsible caused the nonconforming condition, Contractor shall be required to adjust the Purchase Order by Change Order for all such costs and time.

- 8.23 Subcontractor shall promptly remove any work that does not meet the requirements of the Contract Documents, plans and specifications or is incorrectly installed or otherwise disapproved by the Contractor's Representative as failing to meet the intent of the Contract Documents, plans and specifications. Subcontractor shall promptly replace such work without expense to Contractor and shall bear the cost of making good all work of other subcontractors, or Owner, destroyed by such removal or replacement.
- 8.24 Acceptability of completed Work will be based on whether the Work conforms to the Contract Documents. Contractor shall not be responsible for Subcontractor's errors or omissions.
- 8.25 If Contractor deems it unacceptable to have Subcontractor correct work that has been incorrectly done, the parties shall agree upon a deduction from the Purchase Order price. Such a deduction from the Purchase Order price shall in no way affect Subcontractor's responsibility for defects that may occur, nor Subcontractor's responsibility for correcting them, and any damage caused by them.
- 8.26 Subcontractor is required to cooperate with the hierarchy of construction sequencing and coordinate its activities to not interfere with Contractor's work and/or Contractor's other subcontractor(s)'s Work, to enable Contractor to timely complete the Project Work consistent with the Contract Documents.
- 8.27 Subcontractor shall plan and conduct the operations of the Work so that each section started on one day is complete and thoroughly protected before the close of work for that day.
- 8.28 If Owner or any other person or entity asserts a claim or institutes a suit, action or proceeding against Contractor involving the manner or sufficiency of the performance of the Work, upon request of Contractor, Subcontractor will promptly assume the defense of such claim, suit, action, or proceeding, at Subcontractor's sole expense, and Subcontractor will indemnify and hold harmless Contractor and its agents, employees and servants, from and against all liability, loss, damage or expense (including attorney's fees, expert witness fees, court cost, and similar costs) arising out of or relating to such claim, suit, action or proceeding, but only to the extent caused by Subcontractor or persons or entities for whose acts Subcontractor may be liable.
- 8.29 Subcontractor acknowledges that it must comply with this Agreement's E-Verify Certification Addendum, and its failure to comply will result in termination of this Agreement.
- 8.30 Subcontractor acknowledges that Contractor has a zero tolerance policy regarding substance abuse, profane language and harassment by Subcontractor's employees and/or sub-subcontractors. Subcontractor shall immediately remove from the Work Site any employee and/or sub-subcontractor that Contractor's Representative deems to be disruptive to the work environment and/or objectionable to Owner's Representative.

ARTICLE 9 WARRANTY

- 9.1 Subcontractor warrants to Contractor and Owner that the construction, including all Subcontractor-supplied materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in material and workmanship. Subcontractor's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Contractor or anyone for whose acts Contractor may be liable. Nothing in this

warranty shall provide Owner with greater warranty rights than set forth in this section or the Contract Documents. Subcontractor will provide Contractor, on behalf of Owner, all manufacturers' warranties upon Final Completion of the Project. Subcontractor is not responsible for design, including design errors or omissions, unless the Purchase Order assigns Subcontractor design responsibility.

- 9.2 Subcontractor agrees to correct any Work that is found to be not in conformance with the Contract Documents, including that part of the Work subject to Section 8.1 hereof, within a period of two (2) years from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period of time, to the extent required by the Contract Documents.
- 9.3 Subcontractor shall guarantee all labor and Subcontractor-supplied materials for two (2) years from the date of final payment by Contractor. Subcontractor shall promptly respond to and make repairs during the warranty period in accordance with the terms and conditions of the manufacturer's material warranty and the Contract Documents, including any damage done to Owner's property due to such defects.
- 9.4 Subcontractor shall, within two (2) days of receipt of written notice from Contractor that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the removal and replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work.
- 9.5 The two-year period referenced in Section 9.2 above applies only to Subcontractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Contractor may have regarding Subcontractor's other obligations under the Contract Documents or this Agreement.

ARTICLE 10 CONTRACTOR'S RESPONSIBILITIES

- 10.1 Contractor shall, throughout the performance of the Work, cooperate with Subcontractor and perform its responsibilities, obligations and services in a timely manner to facilitate Subcontractor's timely and efficient performance of the Work and to prevent delay or interference with Subcontractor's performance of its obligations under the Contract Documents.
- 10.2 Contractor agrees to furnish planning, design phase, construction administration and management services and to use its best efforts to complete the Projects in an expeditious and economical manner consistent with the interests of Owner.
- 10.3 Contractor shall provide timely reviews and approvals of interim design submissions and construction documents consistent with the turn-around times set forth in Contractor's performance schedule.
- 10.4 Contractor's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Subcontractor to fulfill its obligations under the Contract Documents. Contractor's Representative shall also provide Subcontractor with prompt notice if it observes any failure on the part of Subcontractor to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.
- 10.5 Contractor is responsible for all work performed on the Project or at the Work Site by separate contractors under Contractor's control. Contractor shall contractually require its separate contractors to cooperate with the hierarchy of construction sequencing, and to coordinate their activities to not interfere with Subcontractor's Work to enable Subcontractor to timely complete the Work consistent with the Contract Documents.

**ARTICLE 11
HAZARDOUS CONDITIONS AND
DIFFERING SITE CONDITIONS**

- 11.1 If Subcontractor or its sub-subcontractors on the site use Hazardous Materials or any substances which by law would have required notification to employees, they shall, prior to harmful exposure by any employee to such substance, give written notice of the chemical composition thereof in sufficient detail and provide proper employee training to comply with such laws and will comply with such laws in the handling of such Hazardous Materials.
- 11.2 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Subcontractor is not responsible for any pre-existing Hazardous Conditions encountered at the Work Site. Should Subcontractor encounter any Hazardous Conditions, Subcontractor will stop Work immediately in the affected area and duly notify Contractor and, if required by Legal Requirements, notify all government or quasi-government entities with jurisdiction over the Project or Work Site.
- 11.3 Upon receiving notice of the presence of suspected Hazardous Conditions, Contractor shall notify Owner. Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to ascertain whether Hazardous Conditions have actually been encountered, and if they have been encountered to prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.
- 11.4 Subcontractor shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides Contractor with written certification that: (a) the Hazardous Conditions have been removed or rendered harmless; and (b) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site. Contractor will provide Subcontractor with written notice to proceed with the work.
- 11.5 Subcontractor will be entitled, in accordance with the terms of this Agreement, to an adjustment in its Purchase Order price and/or time(s) to the extent Subcontractor's cost and/or time of performance have been adversely affected by the presence of unknown, unanticipated, or unforeseen Hazardous Conditions.
- 11.6 To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless Contractor, Design Consultants, other subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorney's fees and expenses, arising out of or resulting from its removal or remediation of Hazardous Conditions at the Work Site.
- 11.7 Concealed or latent physical conditions at the Work Site that: (a) materially differ from the conditions indicated in the Contract Documents; or (b) are of an unusual nature differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to and defined herein as "Differing Site Conditions." If Subcontractor encounters a Differing Site Condition, Subcontractor shall immediately notify Contractor. Subcontractor shall be entitled to an adjustment in the Purchase Order price and/or time(s) to the extent Contractor's cost and/or time of performance are compensated by Owner for the adverse impact by the Differing Site Condition.
- 11.8 Upon encountering a Differing Site Condition and proper notification by Subcontractor, Contractor shall provide prompt notice to Owner of such condition, which notice shall not be later than two (2) days after such condition has been encountered. Contractor shall, to the extent

reasonably permitted, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

ARTICLE 12 INSURANCE AND BONDS

- 12.1 Subcontractor is responsible for procuring and maintaining from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement, the following insurance coverages for certain claims which may arise from or out of the performance of the Work and obligations under the Contract Documents:
- .1 Coverage for claims arising under workers' compensation, disability and other similar employee benefit laws applicable to the Work.
 - .2 Coverage for claims by Subcontractor's employee for bodily injury, sickness, disease, or death.
 - .3 Coverage for claims by any person other than Subcontractor's employees for bodily injury, sickness, disease, or death.
 - .4 Coverage for usual personal injury liability claims for damages sustained by a person as a direct or indirect result of Subcontractor's employment of the person, or sustained by any other person.
 - .5 Coverage for claims for damages (other than to the Work) because of injury to or destruction of tangible property, including loss of use.
 - .6 Coverage for claims of damages because of personal injury or death, or property damage resulting from ownership, use and maintenance of any motor vehicle.
 - .7 Coverage for contractual liability claims arising out of Subcontractor's obligations under Section 11 hereof.
- 12.2 Subcontractor's liability insurance required by Section 12 above shall be written for the coverage amounts set forth in the Article 12.3 and shall include completed operations insurance for the period of time set forth in this Agreement.
- 12.3 Subcontractor shall maintain the following insurance:
- (a) Worker's Compensation and Employer's Liability Insurance in an amount not less than: Worker's Compensation Insurance for the legal liability for bodily injury by accident or disease to an employee arising out of and in the course of the employee's employment.
- | | |
|---------------------------|---------------------------|
| Bodily Injury by Accident | \$1,000,000 each accident |
| Bodily Injury by Disease | \$1,000,000 per employee |
| Bodily Injury by Disease | \$1,000,000 policy limit |
- (b) Comprehensive General Liability Insurance in amounts not less than:
- Contractual Liability Insurance – to cover the obligations of the Subcontractor with minimum limits as required for Commercial General Liability Insurance.
- | | |
|---|-------------|
| Each Occurrence Limit - Bodily Injury & Property Damage | \$1,000,000 |
| Damage to Premises Rented to You | \$500,000 |
| Medical Expense Limit | \$10,000 |

Personal Injury & Advertising Injury	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operation Aggregate Limit	\$2,000,000

(c) Comprehensive Automobile Liability Insurance in the following amounts:

Automobile Liability Insurance – for all vehicles used in performance of the work, whether owned, hired, or non-owned with minimum limits of \$1,000,000 Combined Single Limit.

Bodily Injury	\$1,000,000 per person \$1,000,000 per occurrence
Property Damage	\$1,000,000 per occurrence

(d) Umbrella or Excess Liability Insurance in the following amounts:

Umbrella or Excess Liability Insurance for liability insurance that is in excess of specified limits for all of the other above listed policies in this Article 12.3.

All projects (excluding torch-applied roofing)	\$5,000,000 per occurrence \$5,000,000 general aggregate \$5,000,000 products & completed operations aggregate
Torch-applied roofing projects	\$10,000,000 per occurrence \$10,000,000 General Aggregate \$10,000,000 products and completed operations aggregate

The General Aggregate applies per project and per location.

Contractor understands that Subcontractor may need to procure an umbrella or excess liability rider policy for each torch-applied roofing project. In situations where Subcontractor does not have a \$10,000,000 per occurrence limit for umbrella or excess liability insurance, Subcontractor shall submit a quote to Contractor on their insurance agent's letterhead for approval prior to binding the rider policy for the torch-applied roofing project. Contractor will issue a Change Order to Subcontractor after review and approval of the quote. Upon receipt of the Change Order and prior to beginning work on the Project, Subcontractor shall bind the \$10,000,000 per occurrence limit umbrella or excess liability insurance rider policy and provide evidence to Contractor of the policy in force.

- 12.4 The Certificate of Insurance furnished by Subcontractor as evidence of the insurance maintained by Subcontractor shall include a clause obligating the Insurer to give Contractor thirty (30) days prior written notice of cancellation of any material change in the insurance.
- 12.5 Subcontractor is required to file Certificates of Insurance properly completed and signed by an authorized insurance company representative before it commences Work at the Work Site. No monies will be paid to Subcontractor until the acceptable certificates are on file with Contractor.
- 12.6 When Subcontractor is designated design responsibility in the Scope-of-Work on the Purchase Order, Subcontractor's liability insurance set forth in Section 12 shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

- 12.7 Prior to commencing any construction phase services, Subcontractor shall provide Contractor with certificates evidencing that: (a) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents; and (b) no insurance coverage will be canceled, renewal refused, or materially changed unless written notice is provided to Contractor at least thirty (30) days prior to such change.
- 12.8 Any loss covered under Subcontractor's property insurance shall be adjusted and made payable to Owner and Contractor as trustees for the insured as their interests may appear. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 13.
- 12.9 Contractor and Subcontractor mutually waive against each other and Contractor's separate contractors, Design Consultants, subcontractors, agents and employees of each and all of them, all damages covered by insurance provided in Paragraph 12.3 above, except such rights as they may have to the proceeds of such insurance. Contractor and Subcontractor shall, where appropriate, required similar waivers of subrogation from Subcontractor's sub-subcontractors, and shall require each of them to include similar waivers in their contracts.
- 12.10 If Contractor requires Subcontractor to obtain performance, labor and material payment bonds, or other forms of performance security, the amount of such security shall be set forth in the Contract Documents for the Purchase Order and cost and expense of such forms of security shall be paid by Contractor to Subcontractor as part of and included in Subcontractor's price and claim for General Conditions. Subcontractor shall use standard industry bond forms.
- 12.11 Subcontractor's additional insured endorsements, as required by the Purchase Order, are applicable to claims or losses that arise out of Subcontractor's performance of the Work, but only to the extent the claims or losses are caused by Subcontractor or persons or entities for whose acts Subcontractor may be liable.

ARTICLE 13 DISPUTE RESOLUTION

- 13.1 If either Contractor or Subcontractor believes it is entitled to relief against the other for any event arising out of or relating to the Work or a Purchase Order, such party shall provide written notice to the other explaining the basis for its claim. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of this Agreement. In the absence of any specific notice requirement, written notice shall be given within a reasonable time after the occurrence giving rise to the claim. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim, the specific contractual adjustment or relief requested, and the basis of such request.
- 13.2 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Contractor and Subcontractor each commit to resolve them in an amicable, professional and expeditious manner to avoid unnecessary losses, delays and disruption to the Work.
- 13.3 Contractor and Subcontractor shall first attempt to resolve disputes or disagreements at the field level through discussions between Contractor's Representative and Subcontractor's Representative.

- 13.4 If a dispute or disagreement cannot be resolved through Contractor's Representative and Subcontractor's Representative, Contractor's Senior Representative and Subcontractor's Senior Representative shall meet as soon as conveniently possible, but not later than thirty (30) days after such a request is made to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties shall exchange relevant information that will assist the parties in resolving their dispute or disagreement.
- 13.5 If the Senior Representatives determine that the dispute or disagreement cannot be resolved or settled for terms satisfactory to both parties, the parties shall submit the dispute or disagreement to arbitration.
- 13.6 Any claims, disputes or controversies between the parties arising out of or relating to this Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 13.3 through 13.5 above shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") then in effect, unless the parties mutually agree otherwise.
- 13.7 The decision of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgments may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.
- 13.8 Contractor and Subcontractor expressly agree that any arbitration pursuant to this Article 13 may be joined or consolidated with any arbitration involving any other person or entity that will be: (a) necessary to resolve the claim, dispute or controversy; or (b) substantially involved or affected by such claim, dispute or controversy. Both Contractor and Subcontractor shall include appropriate provisions in all contracts they execute with other parties in connection with the Project or Purchase Order to require such joinder or consolidation.
- 13.9 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party its reasonably incurred attorney's fees, expert witness fees and expenses.
- 13.10 Notwithstanding anything to the contrary in this Article 13, neither Contractor nor Subcontractor shall be liable to the other for any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, business, reputation or financing.

ARTICLE 14 TERMINATION AND ACCELERATION

- 14.1 If Subcontractor persistently fails to perform the following obligations: (a) provide a sufficient number of skilled workers; (b) supply materials required by the Contract Documents; (c) comply with applicable Legal Requirements; (d) timely pay, without reasonable cause, vendors, material suppliers and/or sub-subcontractors; (e) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such may be adjusted; or (f) perform material obligations under the Contract Documents, then Contractor shall have the rights set forth in Articles 14.2 through 14.9 below.
- 14.2 Contractor may accelerate or supplement the work of the Subcontractor by engaging a third party. The direct costs incurred by the Contractor for such third party plus a standard mark-up of 10% will be set-off against the amount currently owed or shall become due to the Subcontractor. If the remaining unpaid balance due to the Subcontractor is not sufficient to set-off the additional costs incurred by the Contractor to accelerate or supplement the work of the Subcontractor, then the Subcontractor will pay Contractor the amount of the shortfall upon written demand.

- 14.3 Contractor may terminate the contract with Subcontractor and finish the work by whatever reasonable method Contractor deems expedient if Subcontractor:
- (a) Persistently or repeatedly refuses to supply specified materials or to provide enough skilled workers to ensure the project will be completed within the time period indicated in the project schedule;
 - (b) Fails to make payment to employees, sub-subcontractors, equipment suppliers, and/or suppliers for labor and/or materials;
 - (c) Is guilty of material breach of a provision of the contract documents; or
 - (d) Fails to perform one of the obligations set forth in 14.1.
- 14.4 When Contractor terminates the contract for any of the above reasons, Subcontractor shall not be entitled to receive further payment until the work is finished and accepted by Owner. If the unpaid balance of the contract sum exceeds the cost of finishing the work, it will be paid to Subcontractor. If the cost to finish the work exceeds the unpaid balance, Subcontractor shall pay the difference to Contractor.
- 14.5 Upon the occurrence of an event set forth in Section 14.1 or Section 14.3 above, Contractor shall provide written notice to Subcontractor that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within five (5) days of the Subcontractor's receipt of such notice. If Subcontractor fails to cure, or reasonably commence to cure, such problem, then Contractor may declare the Agreement terminated by default by providing written notice to Subcontractor of such declaration.
- 14.6 Upon declaration that the Agreement has been terminated pursuant to Section 14.5 above, Contractor may enter upon premises and take possession of all materials and equipment which have been purchased or provided for the performance of the Work and paid for by Contractor for the purpose of completing the Work. In the event of such termination, Contractor shall be liable only for payment of costs incurred for services rendered and accepted before the effective date of the termination and Subcontractor shall not be entitled to receive such payment until the Work is finally completed and accepted by Owner in accordance with the Contract Documents.
- 14.7 If Contractor improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience. Contractor shall pay Subcontractor for the Work performed as of the date of such termination, according to the schedule of values. Subcontractor shall also be entitled to receive "demobilization items" as provided in the schedule of values to the extent that the corresponding tasks are completed throughout the termination. Payment by Owner for Contractor's costs and expenses does not preclude the Subcontractor's rights and remedies pursuant to Section 13 above.
- 14.8 Subcontractor, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:
- .1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, due to circumstances beyond Contractor's control.
 - .2 Contractor's failure to provide Subcontractor with any information, or approvals that are Contractor's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project.
 - .3 Contractor's failure to cure the problems set forth in Section 3.8 above after Subcontractor has stopped work.
- 14.9 Upon the occurrence of an event set forth in Section 14.7 above, Subcontractor shall provide notice to Contractor that it intends to terminate the Agreement unless the problems cited are cured,

or commence to be cured, within ten (10) days of Contractor's receipt of such notice. If Contractor fails to cure, or reasonably commence to cure, such problem, then Subcontractor shall give a second written notice to Contractor of its intent to terminate within an additional five (5) day performance period. If Contractor, within the five (5) day performance period, fails to cure, or reasonably commence to cure, such problem, then Subcontractor may declare the Agreement terminated for default by providing written notice to Contractor of such declaration. In such case, Subcontractor shall be entitled to recover in the same manner as if Contractor had terminated the Agreement for its convenience under Article 14.5 of the Agreement.

- 14.10 At any time Contractor may terminate this Agreement in whole or in part if: (a) Contractor determines that a termination is in its best interests; or (b) if Owner exercises its termination-for-convenience rights. Contractor may terminate this Agreement by issuing Subcontractor written notice of the termination, specifying the extent of the termination and the effective date. In the event of such termination, Contractor shall be liable only for payment of costs incurred for services rendered and accepted prior to the effective date of the termination.

**ARTICLE 15
MISCELLANEOUS**

- 15.1 Contractor and Subcontractor intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, successors and assigns.
- 15.2 The Contract Documents shall be governed by the laws of the state where the Work is performed without giving effect to its conflict of law principles.
- 15.3 If any provision of the Contract Documents is determined to be superseded, invalid, illegal, or otherwise unenforceable, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.
- 15.4 The failure of either Contractor or Subcontractor to demand, in any one or more instances, on the performance of any of the obligations required by the Contract Documents, shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.
- 15.5 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given five (5) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; or (c) if transmitted by facsimile, by the time stated on a machine generated confirmation that notice was received at the facsimile number of the intended recipient.
- 15.6 The Contract Documents may not be changed, altered, or amended in any way except in writing, signed by a duly authorized representative of each party.

CONTRACTOR:
Garland/DBS, Inc.

SUBCONTRACTOR:
Contractor

(Signature) (Date)

(Signature) (Date)

(Printed name and title)

(Printed name and title)

PART IV
GENERAL CONDITIONS
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PART IV
GENERAL CONDITIONS

1. DEFINITIONS

Wherever used in these General Conditions or the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof.

1.1 Addenda

Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bid Documents or the Contract Documents.

1.2 Agreement

The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

1.3 Application for Payment

The form accepted by CONSULTANT which is to be used by CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

1.4 Bid

The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

1.5 Bidder

An individual, partnership, or corporation, who submit a Bid for a prime contract with the OWNER, for the Work described in the proposed Contract Documents.

1.6 Bonds

Bid, performance and payment bonds and other instruments of security.

1.7 Calendar Day

A calendar day of twenty-four hours measured from midnight to the next midnight shall constitute a day.

1.8 Change Order

A document recommended by CONSULTANT, which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.

- 1.9 Contract Documents**
The Advertisement for Bidders, Information for Bidders, Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR'S Bid (including documentation accompanying the Bid and any post-bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Special Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all amendments, modifications and supplements.
- 1.10 Contract Unit Price**
The monies payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement. Unit Prices are to be firm for the term of this Contract.
- 1.11 Contract Time**
The number of consecutive calendar days between the date of issuance of the Notice to Proceed and the contract completion date.
- 1.12 CONTRACTOR**
The person, firm or corporation with whom OWNER has entered into the Agreement.
- 1.13 Defective**
An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to CONSULTANT'S recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER).
- 1.14 Drawings**
The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by CONSULTANT and are referred to in the Contract Documents.
- 1.15 Effective Date of the Agreement**
The date indicated in the Agreement on which it becomes effective.
- 1.16 CONSULTANT**
The Lexington-Fayette Urban County Government or its authorized representative.
- 1.17 Field Order**
A documented order issued by CONSULTANT which orders minor changes in the Work, but which does not involve a change in the Contract Price or the Contract Time.

1.18 Giving Notice

Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

1.19 Laws and Regulations

Laws, rules, regulations, ordinances, codes and/or orders.

1.20 Notice of Award

The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

1.21 Notice to Proceed

A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents.

1.22 OWNER

The Lexington-Fayette Urban County Government.

1.23 Partial Utilization

Placing a portion of the Work in service for the purpose for which it is intended (or related purpose) before reaching Completion for all the Work.

1.24 Project

The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

1.25 Inspector

The authorized representative who is assigned to the site or any part thereof.

1.26 Shop Drawings

All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

1.27 Specifications

Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and

workmanship as applied to the Work and certain administrative details applicable thereto.

1.28 Standard Specifications

The "Standard Specifications for Road and Bridge Construction", Transportation Cabinet, Department of Highways, Commonwealth of Kentucky, current edition. MUTCD shall refer to the "Manual of Uniform Traffic Control Devices.

1.29 Subcontractor

An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

1.30 Special Conditions

The part of the Contract Documents which amends or supplements these General Conditions.

1.31 Supplier

A manufacturer, fabricator, supplier, distributor, materialman or vendor.

1.32 Underground Facilities

All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

1.33 Unit Price Work

An amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

1.34 Work

The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

1.35 Time Period

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

2. PRELIMINARY MATTERS

2.1 Delivery of Bonds

When the CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER, such Bonds, Insurance Certificate, and Power of Attorney as CONTRACTOR may be required to furnish.

2.2 Copies of Documents

Owner shall furnish to CONTRACTOR up to three copies (unless otherwise specified in the Special Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

2.3 Commencement of Contract Time; Notice to Proceed

The Contract Time will commence to run on the day specified in the Notice to Proceed.

2.4 Starting the Project

CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

2.5 Before Starting Construction

Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to CONSULTANT any conflict, error or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from CONSULTANT before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or CONSULTANT for failure to report any conflict, error or discrepancy in the Contract Documents, unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

2.6 Submittal of Schedules

Within ten days after the effective date of the Agreement (unless otherwise specified) CONTRACTOR shall submit to CONSULTANT for review:

2.6.1 an estimated progress schedule indicating the starting and completion dates of the various stages of the Work;

2.6.2 a preliminary schedule of Shop Drawing submissions; and

2.6.3 a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into costs per labor and materials by specification

section to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by CONTRACTOR at the time of submission. Schedule of values shall be submitted on AIA G702/703 forms, or approved equal.

2.7 Preconstruction Conference

Before CONTRACTOR starts the Work at the proposed site, a conference attended by CONTRACTOR, CONSULTANT, EEO-Affirmative Action Officer, and other appropriate parties will be held to discuss the following issues: (1) The scheduling of the Work to be completed; (2) The procedures for handling shop drawings and other submittals; (3) The processing of applications for payment; (4) The establishment of an understanding among the involved parties in regard to the proposed project; (5) The establishment of procedures for effectively implementing the LFUCG's 10% minimum DBE goals; and (6) Requirement for Mechanic's Lien on Partial Applications for Payment.

2.8 Finalizing Schedules

At least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, CONSULTANT and others as appropriate will be held to finalize the schedules submitted in accordance with paragraph 2.6. The finalized progress schedule will be acceptable to CONSULTANT as providing orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on CONSULTANT responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility thereof. The finalized schedule of Shop Drawing submissions will be acceptable to CONSULTANT as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to CONSULTANT as to form and substance.

3. CONTRACT DOCUMENTS: INTENT, CONFLICTS, AMENDING AND REUSE

3.1 General

The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.2 Intent

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used

to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or CONSULTANT, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CONSULTANT, or any of CONSULTANT'S consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 8.12.3 or 8.12.4. Clarifications and interpretations of the Contract Documents shall be issued by CONSULTANT as provided in paragraph 8.4.

3.3 Conflicts

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to CONSULTANT in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from CONSULTANT; however, CONTRACTOR shall not be liable to OWNER or CONSULTANT for failure to report any conflict, error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

In resolving such conflicts, errors and discrepancies, the documents shall be given precedence in the following order:

1. Agreement
2. Field and Change Orders
3. Addenda
4. Special Conditions
5. Instruction to Bidders
6. General Conditions
7. Specifications and Drawings

Figure dimension on drawings shall govern over scale dimensions and detailed Drawings shall govern over general Drawings.

3.4 Amending and Supplementing Contract Documents

The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof by means of a Change Order or a Field Order. Contract Price and Contract Time may only be changed by a Change Order.

3.5 Reuse of Documents

Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of CONSULTANT; and they shall not reuse any of them on extensions of the Project or any other project without written consent of OWNER and CONSULTANT and specific written verification or adaptation by CONSULTANT.

4. AVAILABILITY OF LANDS; PHYSICAL CONDITIONS, REFERENCE POINTS

4.1 Availability of Lands

OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in OWNER'S furnishing these lands, rights-of-way or easements entitles CONTRACTOR to an extension of the Contract Time, CONTRACTOR may make a claim therefor as provided in Article 11. CONSULTANT shall determine if the claim is legitimate or not. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 Physical Conditions

4.2.1 Explorations and Reports

Reference is made to the Special Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by CONSULTANT in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon non-technical data, interpretations or opinions contained therein or for the completeness thereof for CONTRACTOR'S purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site.

4.2.2 Existing Structures

Reference is made to the Special Conditions for identification of those drawings of physical conditions in or relating to existing surface and

subsurface structures (except Underground Facilities referred to in paragraph 4.3 which are at or contiguous to the site that have been utilized by CONSULTANT in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for CONTRACTOR'S purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures.

4.2.3 Report of Differing Conditions
If CONTRACTOR believes that:

4.2.3.1 any technical data on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is inaccurate, or

4.2.3.2 any physical conditions uncovered or revealed at the site differ materially from that indicated, reflected or referred to in the Contract Documents,

CONTRACTOR shall, promptly after becoming aware thereof and before performing and WORK in connection therewith (except in an emergency) notify OWNER and CONSULTANT in writing about the inaccuracy or difference.

4.2.4 CONSULTANT'S Review

CONSULTANT will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise CONTRACTOR of CONSULTANT'S findings and conclusions.

4.2.5 Possible Document Change

If CONSULTANT concludes that there is a material error in the Contract Documents or that because of newly discovered conditions a change in the Contract Documents is required, a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

4.2.6 Possible Price and Time Adjustments

In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference.

4.3 Physical Conditions-Underground Facilities

4.3.1 Shown or Indicated

The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is

based on information and data furnished to OWNER or CONSULTANT by the owners of such underground facilities or by others. Unless it is otherwise expressly provided in the Special Conditions:

4.3.1.1 OWNER and CONSULTANT shall not be responsible for the accuracy or completeness of any such information or data; and,

4.2.1.2 CONTRACTOR shall have full responsibility for reviewing and checking all such information and data; for locating all underground facilities shown or indicated in the Contract Documents; for coordination of the Work with the owners of such underground facilities during construction; and for the safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

4.3.2 Not Shown or Indicated

If an underground facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency), identify the owner of such Underground Facility and give written notice thereof to that owner and to OWNER and CONSULTANT. CONSULTANT will promptly review the underground facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such underground facility. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any underground facility that was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of.

4.4 Reference Points

OWNER shall provide engineering surveys to establish reference points for construction which in CONSULTANT'S judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to CONSULTANT whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by a Registered Land Surveyor.

5. CONTRACTOR'S RESPONSIBILITIES

5.1 Supervision

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall assure that all CONTRACTOR personnel (including subcontractors, etc.) conduct themselves in a courteous and respectful manner toward the CONSULTANT and the general public. CONTRACTOR shall keep at the Project Site during the progress of the Work a competent project manager/superintendent and all necessary assistants, all of whom shall be satisfactory to OWNER. OWNER reserves the right to reject CONTRACTOR'S construction superintendent and project management personnel if they are unsatisfactory to OWNER and upon such rejection CONTRACTOR shall designate and provide competent successors. Failure to comply with this condition of the Contract will result in immediate suspension of the Work. Following a review by the Commissioner of Public Works, the Contract may be terminated (see GC section 14). CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

5.2 Superintendence

CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and CONSULTANT except under extraordinary circumstances. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

5.3 Labor

CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. OWNER reserves the right to require CONTRACTOR to remove from the Project any of it's personnel, or subcontractor's personnel for violating LFUCG Policies, Rules or Regulations. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER'S written consent given after prior written notice to CONSULTANT.

5.4 Start-Up and Completion of Work

Unless otherwise specified, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

5.5 Materials and Equipment

All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by CONSULTANT, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to CONSULTANT, or any of CONSULTANT'S consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 8.12.3 or 8.12.4.

5.5.1 Not Clearly Specified or Indicated

In all instances where materials specified are obtainable in different sizes, weights, trade grades, qualities or finishes, etc., whose weights, trade grades, qualities or finishes, etc., are not clearly specified or indicated on the Drawings, the CONTRACTOR shall notify the CONSULTANT of all such instances at least five (5) days in advance of receiving the proposals. The CONSULTANT will then determine which size, weight, trade grade, quality, finish, etc., is required.

5.5.2 Coordination of Work

The CONTRACTOR shall see that for his own Work and for the work of each subcontractor, proper templates and patterns necessary for the coordination of the various parts of the Work are prepared. The CONTRACTOR shall furnish or require the Subcontractor to furnish such duplicates as will enable the Subcontractors to fit together and execute fully their respective portions of the Work.

5.6 Adjusting Progress Schedule

CONTRACTOR shall submit to CONSULTANT for acceptance (to the extent indicated in paragraph 2.8) adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the Contract Documents applicable thereto.

5.7 Substitutes or "Or-Equal" Items

5.7.1 General

Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by OWNER/CONSULTANT if sufficient information is submitted by CONTRACTOR to allow OWNER/CONSULTANT to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by OWNER/CONSULTANT will include the following. Requests for review of substitute items of material and equipment will not be accepted by OWNER/CONSULTANT from anyone, other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to OWNER/CONSULTANT for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S achievement of completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by OWNER/CONSULTANT in evaluating the proposed substitute. OWNER/CONSULTANT may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute.

5.7.2 Substitutes

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to OWNER/CONSULTANT, if CONTRACTOR submits sufficient information to allow OWNER/CONSULTANT to determine that the substitute proposed is equivalent to that indicated or required by the Contract

Documents. The procedure for review by OWNER/CONSULTANT will be similar to that provided in paragraph 5.7.1 as applied by OWNER/CONSULTANT.

5.7.3 OWNER/CONSULTANT'S Approval

OWNER/CONSULTANT will be allowed a reasonable time within which to evaluate each proposed substitute. OWNER/CONSULTANT will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without OWNER/CONSULTANT'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute. OWNER/CONSULTANT will record time required by OWNER/CONSULTANT and OWNER/CONSULTANT'S consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Contract Documents occasioned thereby. Whether or not OWNER/CONSULTANT accepts a proposed substitute, CONTRACTOR shall reimburse OWNER for the charges of OWNER/CONSULTANT and OWNER/CONSULTANT'S consultants for evaluating each proposed substitute.

5.8 Subcontractors, Suppliers, and Others

5.8.1 Acceptable to CONSULTANT

CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and CONSULTANT as indicated in paragraph 5.8.2), whether initially or as a substitute, against whom OWNER or CONSULTANT may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

5.8.2 Objection After Due Investigation

If the Contract Documents require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and CONSULTANT and if CONTRACTOR has submitted a list thereof, OWNER'S or CONSULTANT'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute. No acceptance by

OWNER or CONSULTANT of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or CONSULTANT to reject defective Work.

5.8.3 Contractor Responsible for Acts of Subcontractors

The CONTRACTOR shall perform on the site, and with its own organization, work equivalent to at least fifty (50) percent of the total amount of Work to be performed under the Contract. This percentage may be reduced by a supplemental agreement to this Contract if, during performing the Work, the CONTRACTOR requests a reduction and the Urban County project manager determines that the reduction would be to the advantage of the Urban County Government.

The CONTRACTOR shall, at the time he submits his proposal for the Contract, notify the OWNER in writing of the names of Subcontractors proposed for the Work. He shall not employ any Subcontractor without the prior written approval of the OWNER.

CONTRACTOR shall be fully responsible to OWNER and CONSULTANT for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR'S own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between OWNER or CONSULTANT and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or CONSULTANT to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

5.8.4 Division of Specifications

The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

5.8.5 Agreement Between Contractor and Subcontractors

All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and CONSULTANT.

5.8.6 Statements and Comments by CONTRACTOR

Neither the CONTRACTOR, his employees, nor his subcontractors shall at any time make any statement or comment as

to the project scope, nature, intention, design, or construction method to any third party or parties without the explicit written consent of the OWNER.

Any third party requesting such information shall be referred to the OWNER or his representative.

Should there be any change from the original intent of the project as a result of any statement or comment by the contractor, his employees or subcontractors, contractor shall be held liable for any change in the scope, nature, design, or construction method and shall bear the full cost for the previously mentioned changes.

5.9 Patent Fees and Royalties

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

5.10 Permits

Unless otherwise provided in the Special conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or if there are no Bids on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

5.11 Laws and Regulations

5.11.1 CONTRACTOR to Comply

CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor CONSULTANT shall be responsible for monitoring CONTRACTOR'S compliance with any Laws and Regulations.

5.11.2 Specifications and Drawings at Variance

If CONTRACTOR observes that the Specifications or Drawings are at variance with any Laws or Regulations, CONTRACTOR shall give CONSULTANT prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 3.4. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Laws, or Regulations, and without such notice to CONSULTANT, CONTRACTOR shall bear all costs arising therefrom; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with such Laws and Regulations.

Any party, firm or individual submitting a proposal pursuant to invitation must have paid all taxes owed to the Lexington-Fayette Urban County Government at the time the proposal is submitted, and must maintain a "current" status in regard to those taxes throughout the Contract. If applicable, business must be licensed in Fayette County.

5.12 Taxes

CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work. Any party, firm or individual submitting a proposal pursuant to invitation must have paid all taxes owed to the Lexington-Fayette Urban County Government at the time the proposal is submitted, and must maintain a "current" status in regard to those taxes throughout the Contract. If applicable, business must be licensed in Fayette County.

5.13 Use of Premises

5.13.1 Project Site

CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the staging areas or work site areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such

land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against OWNER or CONSULTANT by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER and CONSULTANT harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER or CONSULTANT to the extent based on a claim arising out of CONTRACTOR'S performance of the Work.

5.13.2 Clean UP

During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

5.13.1 Loading of Structures

CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

5.14 **Record Drawings**

CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to CONSULTANT for reference. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to CONSULTANT for OWNER.

5.15 **Shop Drawings and Samples**

5.15.1 Shop Drawing Submittals

After checking and verifying all field measurements and after complying

with applicable procedures specified, CONTRACTOR shall submit to CONSULTANT for review and approval in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.8), or for other appropriate action if so indicated in the Special Conditions, five copies (unless otherwise specified) of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as CONSULTANT may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable CONSULTANT to review the information as required.

5.15.2 Sample Submittals

CONTRACTOR shall also submit to CONSULTANT for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

5.15.3 Review by CONTRACTOR

Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

5.15.4 Notice of Variation

At the time of each submission, CONTRACTOR shall give CONSULTANT specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to CONSULTANT for review and approval of each such variation.

5.15.5 CONSULTANT'S Approval

CONSULTANT will review and approve with reasonable promptness Shop Drawings and samples, but CONSULTANT'S review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or

procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by CONSULTANT, and shall return the required number of corrected copies of Shop Drawings and submit, as required, new samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by CONSULTANT on previous submittals.

5.15.6 Responsibility for Errors and Omissions

CONSULTANT'S review and approval of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called CONSULTANT'S attention to each such variation at the time of submission as required by paragraph 5.15.4 and CONSULTANT has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any approval by CONSULTANT relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 5.15.3.

5.15.7 Cost of Related Work

Where a Shop or sample is required by the Specifications, any related Work performed prior to CONSULTANT'S review and approval of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

5.16 Continuing the Work

CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolutions of any disputes or disagreements, except as permitted by paragraph 14.5 or as CONTRACTOR and OWNER may otherwise agree in writing.

5.17 Erosion and Sediment Control

5.17.1 General Environmental Requirements

The CONTRACTOR and Subcontractors performing work on projects on behalf of the OWNER shall comply with all applicable federal, state, and local environmental regulations and all requirements and conditions set forth in "special" permits including but not limited to Corp of Engineers 404 permits, 401 Water Quality Certifications, Stream Crossing and Floodplain Encroachment Permits.

Any fines or penalties resulting from the failure to comply with the terms of the federal, state or local permits or perform necessary corrective action are solely the obligation of the CONTRACTOR.

5.17.2 Stormwater Pollution Prevention

A. The CONTRACTOR shall exercise due care to prevent or minimize any damage to any stream or wetland from pollution by debris, sediment or other material. The operation of equipment and/or materials in a jurisdictional wetland is expressly prohibited. Water that has been used for washing or processing, or that contains oils, sediments or other pollutants shall not be discharged from the job site. Such waters shall be collected and properly disposed of by the CONTRACTOR in accordance with applicable local, state and federal law.

B. The CONTRACTOR is solely responsible for securing all required state and local permits associated with stormwater discharges from the project including, but not necessarily limited to the KY Notice of Intent to Disturb (NOI) for Coverage of Storm Water Discharges Associated with Construction Activities under the KPDES Storm Water General Permit KYR100000 and the LFUCG, Land Disturbance Permit. Permit application preparation and all required documentation are the responsibility of the CONTRACTOR. The CONTRACTOR is solely responsible for maintaining compliance with the stormwater pollution prevention plan or erosion and sediment control plan and ensuring the following:

- a. That the Stormwater Pollution Prevention Plan (SWPPP) or erosion control plan is current and available for review on site;
- b. That any and all stormwater inspection reports required by the permit are conducted by qualified personnel and are available for review onsite; and
- c. That all best management practices (BMPs) are adequately maintained and effective at controlling erosion and preventing sediment from leaving the site.

C. The CONTRACTOR shall provide the necessary equipment and personnel to perform any and all emergency measures that may be required to contain any spillage or leakage and to remove materials, soils or liquids that become contaminated. The collected spill material shall be properly disposed at the CONTRACTOR's expense.

D. Upon completion of the work and with the concurrence of the OWNER, the CONTRACTOR must file a Notice of Termination (NOT) of Coverage Under the KPDES General Permit for Storm Water Discharges Associated with Construction Activity with the appropriate local and state authorities.

E. Any fines or penalties resulting from the failure to comply with the terms of the state or local stormwater permits or perform necessary corrective action are solely the obligation of the CONTRACTOR.

6. OTHER WORK

6.1 Related Work at Site

OWNER may perform other work related to the Project at the site by OWNER'S own forces, have other work performed by utility owners or let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work; and, if such performance will involve additional expense to CONTRACTOR or requires additional time, a Change Order to the Contract will be negotiated.

6.2 Other Contractors or Utility Owners

CONTRACTOR shall afford each utility owner and other contractor who is a party to such a direct contract (or OWNER, if OWNER is performing the additional work with OWNER'S employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of CONSULTANT and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

6.3 Delays Caused by Others

If any part of CONTRACTOR'S Work depends for proper execution or results upon the work of any such other contractor or utility owner (or OWNER), CONTRACTOR shall inspect and promptly report to CONSULTANT in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. CONTRACTOR'S failure so to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR'S Work except for latent or non-apparent defects and deficiencies in the other work.

6.4 Coordination

If OWNER contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Special Conditions, and the specific matters to be covered by such authority and

responsibility will be itemized, and the extent of such authority and responsibilities will be provided, in the Special Conditions.

7. OWNER'S RESPONSIBILITIES

7.1 Communications

OWNER shall issue all communications to CONTRACTOR through CONSULTANT.

7.2 Data and Payments

OWNER shall furnish the data required of OWNER under the Contract Documents promptly after they are due.

7.3 Lands, Easements, and Surveys

OWNER'S duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER'S identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by CONSULTANT in preparing the Drawings and Specifications.

7.4 Change Orders

OWNER is obligated to execute Change Orders as indicated in paragraph 9.4.

7.5 Inspections, Tests and Approvals

OWNER'S responsibility in respect to certain inspections, tests and approvals is set forth in paragraph 13.3.

7.6 Stop or Suspend Work

In connection with OWNER'S right to stop Work or suspend Work, see paragraph 12.4 and 14.1 Paragraph 14.2 deals with OWNER'S rights to terminate services of CONTRACTOR under certain circumstances.

8. CONSULTANT'S STATUS DURING CONSTRUCTION

8.1 OWNER'S Representative

CONSULTANT will be OWNER'S representative during the construction period. The duties and responsibilities and the limitations of authority of CONSULTANT as OWNER'S representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and CONSULTANT.

8.2 Visits to Site

CONSULTANT will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. CONSULTANT will not be required to make exhaustive or

continuous on-site inspections to check the quality or quantity of the Work. CONSULTANT'S efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations, CONSULTANT will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.

8.3 Project Representation

CONSULTANT will provide an Inspector to assist CONSULTANT in observing the performance of the Work. If OWNER designates another agent to represent OWNER at the site who is not CONSULTANT'S agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Special Conditions.

8.4 Clarifications and Interpretations

CONSULTANT will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as CONSULTANT may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

8.5 Authorized Variations in Work

CONSULTANT may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order.

8.6 Rejecting Defective Work

CONSULTANT will have authority to disapprove or reject Work which CONSULTANT believes to be defective, and will also have authority to require special inspection or testing of the Work as provided in paragraph 12.3, whether or not the Work is fabricated, installed or completed.

8.7 Shop Drawings

In connection with CONSULTANT'S responsibility for Shop Drawings and samples, see paragraphs 5.15.1 through 5.16 inclusive.

8.8 Change Orders

In connection with CONSULTANT'S responsibilities as to Change Orders, see Articles 10, 11 and 12.

8.9 Payments

In connection with CONSULTANT'S responsibilities with respect to Applications for Payment, etc., see Article 13.

8.10 Determinations for Unit Prices

CONSULTANT will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR.

CONSULTANT will review with CONTRACTOR CONSULTANT'S preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

8.11 Decision on Disputes

CONSULTANT will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 10 and 11 in respect of changes in the Contract Price or Contract Time will be referred initially to CONSULTANT in writing with a request for a formal decision in accordance with this paragraph, which CONSULTANT will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered to CONSULTANT promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to CONSULTANT within sixty days after such occurrence unless CONSULTANT allows an additional period of time to ascertain more accurate data in support of the claim.

8.12 Limitations on CONSULTANT's Responsibilities

8.12.1 CONTRACTOR, Supplier, or Surety

Neither CONSULTANTS authority to act under this Article 8 or elsewhere in the Contract Documents nor any decision made by CONSULTANT in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of CONSULTANT to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

8.12.2 To Evaluate the Work

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives or like "effect" or "import" are used to describe a requirement, direction, review or judgment of CONSULTANT as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign CONSULTANT any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 8.12.3 or 8.12.4.

8.12.3 CONTRACTOR'S Means, Methods, Etc.

CONSULTANT will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and CONSULTANT will not be responsible for CONTRACTOR'S failure to perform or furnish the Work in accordance with the Contract Documents.

8.12.4 Acts of Omissions of CONTRACTOR

CONSULTANT will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

9. CHANGES IN THE WORK

9.1 OWNER May Order Change

Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Change Order. Upon receipt of such notice, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

9.2 Claims

Claims for an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Change Order will be settled as provided for in Article 10 or Article 11.

9.3 Work Not in Contract Documents

CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraph 3.4, except in the case of an emergency and except in the case of uncovering Work as provided in paragraph 12.3.4.

9.4 Change Orders

OWNER and CONTRACTOR shall execute appropriate Change Orders covering:

9.4.1 changes in the Work which are ordered by OWNER pursuant to paragraph 9.1, are required because of acceptance of defective Work under paragraph 12.7 or corrective defective Work under paragraph 12.8, or are agreed to by the parties;

9.4.2 changes in the Contract Price or Contract Time which are agreed to by the parties; and

9.4.3 changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by CONSULTANT pursuant to paragraph 8.11; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and REGULATIONS, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 5.16.

9.5 Notice of Change

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10. CHANGE OF CONTRACT PRICE

10.1 Total Compensation

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

10.2 Claim for Increase or Decrease in Price

The Contract Price may only be changed by a Change Order. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the CONTRACTOR to the CONSULTANT promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after such occurrence (unless CONSULTANT allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by CONTRACTOR'S written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the CONTRACTOR is entitled as a result of the occurrence of said event.

10.3 Value of Work

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

10.3.1 Unit Prices

Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of

the items involved (subject to the provisions of paragraphs 10.9.1. through 10.9.3, inclusive).

10.3.2 Lump Sum

By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 10.6.2.1).

10.3.3 Cost Plus Fee

On the basis of the Cost of the Work (determined as provided in paragraphs 10.4 and 10.5) plus a CONTRACTOR'S fee for overhead and profit (determined as provided in paragraphs 10.6 and 10.7).

10.4 Cost of the Work

The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project; shall include only the following items; and shall not include any of the costs itemized in paragraph 10.5:

10.4.1 Payroll Costs

Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

10.4.2 Materials and Equipment Costs

Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

10.4.3 Subcontractor Costs

Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of CONSULTANT, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR'S Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

10.4.4 Special Consultant Costs

Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

10.4.5 Supplemental Costs

10.4.5.1 The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the Work.

10.4.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

10.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of CONSULTANT, and the costs of transportation, loading, unloading, installation, dismantling and removal shall be in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

10.4.5.4 Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

10.4.5.5 Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

10.4.5.6 Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR'S fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid a fee proportionate to that stated in paragraph 10.6.2 for services.

10.4.5.7 The cost of utilities, fuel and sanitary facilities at the site.

10.4.5.8 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

10.4.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by OWNER.

10.5 Not to Be Included in Cost of the Work

The term Cost of the Work shall not include any of the following:

10.5.1 Costs of Officers and Executives

Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general

managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR'S principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.4.1 or specifically covered by paragraph 10.4.4 - all of which are to be considered administrative costs covered by the CONTRACTOR'S fee.

10.5.2 Principal Office

Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.

10.5.3 Capital Expense

Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.

10.5.4 Bonds and Insurance

Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 10.4.5.9 above).

10.5.5 Costs Due to Negligence

Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

10.5.6 Other Costs

Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.4.

10.6 Contractor's Fee

The CONTRACTOR'S Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

10.6.1 a mutually acceptable fixed fee; or if none can be agreed upon,

10.6.2 a fee based on the following percentages of the various portions of the Cost of the Work:

10.6.2.1 for costs incurred under paragraphs 10.4.1 and 10.4.2, the CONTRACTOR'S fee shall be fifteen percent;

10.6.2.2 for costs incurred under paragraph 10.4.3, the CONTRACTOR'S fee shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all Subcontractors shall be fifteen percent;

10.6.2.3 no fee shall be payable on the basis of costs itemized under paragraphs 10.4.4, 10.4.5 and 10.5;

10.6.2.4 the amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR'S Fee by an amount equal to ten percent of the net decrease; and

10.6.2.5 when both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S fee shall be computed on the basis of the net change in accordance with paragraphs 10.6.2.1 through 10.6.2.4, inclusive.

10.7 Itemized Cost Breakdown

Whenever the cost of any Work is to be determined pursuant to paragraph 10.4 or 10.5, CONTRACTOR will submit in form acceptable to CONSULTANT an itemized cost breakdown together with supporting data.

10.8 Cash Allowances

It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to CONSULTANT, CONTRACTOR agrees that:

10.8.1 Materials and Equipment

The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

10.8.2 Other Costs

CONTRACTOR'S costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

10.8.3 Change Order

Prior to final payment, an appropriate Change Order will be issued as recommended by CONSULTANT to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.9 Unit Price Work

10.9.1 General

Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by CONSULTANT in accordance with Paragraph 8.10.

10.9.2 Overhead and Profit

Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item.

10.9.3 Claim for Increase in Unit Price

Where the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of Work and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 10.

11. CHANGE OF CONTRACT TIME

11.1 Change Order

The Contract Time may only be changed by a Change Order. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered to CONSULTANT promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless CONSULTANT allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by CONSULTANT in accordance with paragraph 8.11. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 11.1.

11.2 Justification for Time Extensions

The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if a claim is made therefore as provided in paragraph 11.1. Such delays shall include, but not be limited to, acts or neglect by OWNER or others performing additional work as contemplated by Article 6, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

11.3 Time Limits

All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 11 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) for delay by either party.

12. WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.1 Warranty and Guarantee

CONTRACTOR warrants and guarantees to OWNER and CONSULTANT that all Work will be in accordance with the Contract Documents and will not be defective. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 12.

12.2 Access to Work

CONSULTANT and CONSULTANT'S representatives, other representatives of OWNER, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

12.3 Tests and Inspections

12.3.1 Timely Notice

CONTRACTOR shall give CONSULTANT timely notice of readiness of the Work for all required inspections, tests or approvals.

12.3.2 Requirements and Responsibilities

The CONSULTANT may require such inspection and testing during the course of the Work as he/she deems necessary to ascertain and assure the integrity and acceptable quality of the materials incorporated and the work performed. Inspection presence may be either full-time or intermittent, and neither the presence nor absence at any time of the CONSULTANT or the INSPECTOR shall relieve the CONTRACTOR of sole responsibility for the acceptability and integrity of the Work or any part thereof.

The costs of sampling, testing, and inspection on-site to ascertain acceptability of the Work and materials will be borne by the OWNER except as otherwise provided. The OWNER will select a testing laboratory to perform such sampling and testing. Sampling and/or testing required by the CONTRACTOR or necessitated by failure of Work or materials to meet the above acceptability test shall be at the expense of the CONTRACTOR.

Inspection services may be performed by the employees of the OWNER or by others selected or designated by the OWNER or the CONSULTANT.

Sampling and/or testing required for manufacturing quality and/or process control, for certification that raw mineral materials or manufactured products are the quality specified in the contract, or to assure the acceptability for incorporation into the Work shall be borne by the CONTRACTOR or the material supplier.

Cost for inspection, sampling, testing, and approvals required by the laws or regulations of any public body having competent jurisdiction shall be borne by the CONTRACTOR or the material supplier.

Sampling and testing will be in accord with pertinent codes and regulations and with appropriate standards of the American Society of Testing Materials or other specified standards.

12.3.3 On-Site Construction Test and Other Testing

All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by CONSULTANT if so specified).

12.3.4 Covered Work

If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of CONSULTANT, it must, if requested by CONSULTANT, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given CONSULTANT timely notice of CONTRACTOR'S intention to cover the same and CONSULTANT has not acted with reasonable promptness in response to such notice.

12.3.5 CONTRACTOR'S Obligation

Neither observations by CONSULTANT nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR'S obligations to perform the Work in accordance with the Contract Documents.

12.4 **OWNER May Stop the Work**

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party.

12.5 **Correction or Removal of Defective Work**

If required by CONSULTANT, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by CONSULTANT, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

12.6 **One Year Correction Period**

If within one year after the date of Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER'S written instructions, either correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement

(including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service before Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Change Order.

12.7 Acceptance of Defective Work

If, instead of requiring correction or removal and replacement of defective Work, OWNER prefers to accept it, OWNER may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to OWNER'S evaluation of and determination to accept such defective Work (such costs to be approved by CONSULTANT as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals).

12.8 OWNER May Correct Defective Work

If CONTRACTOR fails within a reasonable time after written notice of CONSULTANT to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by CONSULTANT in accordance with paragraph 12.5, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER'S representatives, agents and employees such access to the site as may be necessary to enable OWNER to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of OWNER in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by CONSULTANT, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER'S rights and remedies hereunder.

13. PAYMENTS TO CONTRACTOR AND COMPLETION

13.1 Schedule of Values

The schedule of values established as provided in paragraph 2.8 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to CONSULTANT. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.2 Application for Progress Payment

At least ten days before each progress payment is scheduled (but not more often than once a month), CONTRACTOR shall submit to CONSULTANT for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER'S interest therein, all of which will be satisfactory to OWNER. OWNER shall, within thirty (30) calendar days of presentation to him of an approved Application for Payment, pay CONTRACTOR the amount approved by CONSULTANT. Monthly progress payments shall be ninety (90) percent of the sum obtained by applying the respective bid unit prices to the approved estimated quantities of work completed by the Contractor during the preceding month. The remaining ten (10) percent will be held by the Owner, as retainage. At such time as the CONSULTANT deems appropriate - based on the quality of work performed, progress of cleanup, and other pertinent factors - the rate of retainage, or the total amount retained, may be reduced; although, any reduction in retainage, below the ten (10) percent level, is made solely at the CONSULTANT's discretion. All remaining retainage held will be included in the final payment to the Contractor.

13.2.1 Waivers of Mechanic's Lien

With each Application for Payment OWNER may require CONTRACTOR to submit waivers of mechanic's lien from entities lawfully entitled to file a mechanic's lien arising out of the Contract and related to the Work covered by the payment.

13.2.1.1 Requirement for waivers of Mechanic's Lien on Partial Applications for Payment will be determined and communicated at the Preconstruction Conference.

13.2.1.2 Submit partial waivers on each item for amount requested in previous application, after deduction for retainage, on each item.

13.2.1.3 When an application shows completion of an item, submit conditional final or full waivers.

13.2.1.4 Owner reserves the right to designate which entities involved in the Work must submit waivers.

13.2.1.5 Waiver Forms: Submit executed waivers of lien on forms acceptable to Owner.

13.3 CONTRACTOR'S Warranty of Title

CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

13.4 Review of Applications for Progress Payment

13.4.1 Submission of Application for Payment

CONSULTANT will, after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing CONSULTANT'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

13.4.2 CONSULTANT'S Recommendation

CONSULTANT may refuse to recommend the whole or any part of any payment, if, in CONSULTANT'S opinion, it would be incorrect to make such representations to OWNER. CONSULTANT may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in CONSULTANT'S opinion to protect OWNER from loss because:

13.4.2.1 the Work is defective, or completed Work has been damaged requiring correction or replacement;

13.4.2.2 the Contract Price has been reduced by Written Amendment or Change Order;

13.4.2.3 OWNER has been required to correct defective Work or complete Work in accordance with paragraph 12.8; or

13.4.2.4 of CONSULTANT's actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.2.1 through 14.2.9 inclusive.

13.5 Partial Utilization

OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and has been completed. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER that said part of the Work is complete and request that a Certificate of Completion be issued for that part of the Work.

13.6 Final Inspection

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, CONSULTANT will make a final inspection with CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

13.7 Final Application for Payment

After CONTRACTOR has completed all such corrections to the satisfaction of CONSULTANT and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 5.14) and other documents - all as required by the Contract Documents, and after CONSULTANT has indicated that the Work is acceptable (subject to the provisions of paragraph 13.10), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER'S property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or Supplier fails to

furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

13.8 Final Payment and Acceptance

13.8.1 CONSULTANT'S Approval

If, on the basis of CONSULTANT'S observation of the Work during construction and final inspection, and CONSULTANT'S review of the final Application for Payment and accompanying documentation - all as required by the Contract Documents, CONSULTANT is satisfied that the Work has been completed and CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, CONSULTANT will, after receipt of the final Application for Payment, indicate in writing CONSULTANT'S recommendation of payment and present the Application to OWNER for payment. Thereupon CONSULTANT will give written notice to OWNER and CONTRACTOR that the Work is acceptable, subject to the provisions of paragraph 13.10. Otherwise, CONSULTANT will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application.

13.8.2 Delay in Completion of Work

If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, OWNER shall, upon receipt of CONTRACTOR'S final Application for Payment and recommendation of CONSULTANT, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 10 of Part II, Information for Bidders, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to CONSULTANT with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

13.9 CONTRACTOR'S Continuing Obligation

CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by CONSULTANT, nor the issuance of a certificate of Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor any correction of defective Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the

Work in accordance with the Contract Documents (except as provided in paragraph 13.10).

13.10 Waiver of Claims

The making and acceptance of final payment will constitute:

13.10.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by OWNER of any rights in respect of CONTRACTOR'S continuing obligations under the Contract Documents; and

13.10.2 a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

14. SUSPENSION OF WORK AND TERMINATION

14.1 OWNER May Suspend Work

OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and CONSULTANT which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 10 and 11.

14.2 OWNER May Terminate

The OWNER may terminate the Work upon the occurrence of any one or more of the following events:

14.2.1 if CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

14.2.2 if a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

14.2.3 if CONTRACTOR makes a general assignment for the benefit of creditors;

14.2.4 if a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR'S creditors;

14.2.5 if CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

14.2.6 if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.8 as revised from time to time);

14.2.7 if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

14.2.8 if CONTRACTOR disregards the authority of CONSULTANT, or

14.2.9 if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) such excess will be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such costs incurred by OWNER will be approved as to reasonableness by CONSULTANT and incorporated in a Change Order,

but when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

14.2.10 If safety violations are observed and brought to the Contractors attention and Contractor fails to take immediate corrective measures any repeat of similar safety violations, Owner will order an immediate termination of contract. Note: it is the Contractor's responsibility to know proper safety measures as they pertain to construction and OSHA.

14.2.11 This contract may be canceled by either party thirty (30) days after delivery by canceling party of written notice of intent to cancel to the other contracting party.

14.2.12 This contract may be canceled by the Lexington-Fayette Urban County Government if it is determined that the Bidder has failed to perform under the terms of this agreement, such cancellation to be effective upon receipt of written notice of cancellation by the Bidder.

14.3 CONTRACTOR'S Services Terminated

Where CONTRACTOR'S services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

14.4 Payment After Termination

Upon seven days' written notice to CONTRACTOR, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and any expense sustained plus reasonable termination expenses, which will include, but not be limited to, direct, indirect and consequential costs (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs).

14.5 CONTRACTOR May Stop Work or Terminate

If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or CONSULTANT fails to act on any Application for Payment within sixty days after it is submitted, or OWNER fails for sixty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to OWNER and CONSULTANT, terminate the Agreement and recover from OWNER payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if CONSULTANT has failed to act on an Application for Payment or OWNER has failed to make any payment as aforesaid, CONTRACTOR may upon seven days' written notice to OWNER and

CONSULTANT stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under paragraph 5.16 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER.

15. MISCELLANEOUS

15.1 Claims for Injury or Damage

Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 15.1 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

15.2 Non-Discrimination in Employment

The CONTRACTOR shall comply with the following requirements prohibiting discrimination:

15.2.1 That no person (as defined in KRS 344.010) shall bid on Lexington-Fayette Urban County Government construction projects, or bid to furnish materials or supplies to the Lexington-Fayette Urban County Government, if, within six months prior to the time of opening of bids, said person shall have been found, by declaratory judgment action in Fayette Circuit Court, to be presently engaging in an unlawful practice, as hereinafter defined. Such declaratory judgment action may be brought by an aggrieved individual or upon an allegation that an effort at conciliation pursuant to KRS 344.200 has been attempted and failed, by the Lexington-Fayette County Human Rights Commission.

15.2.2 That it is an unlawful practice for an employer:

15.2.2.1 to fail or refuse to hire, or to discharge any individual or otherwise to discriminate against an individual, with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age, or national origin; or

15.2.2.2 to limit, segregate or classify his employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's sex, race, color, religion, age, or national origin.

15.2.3 That it is an unlawful practice for an employer, labor organization, or joint-labor management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against an individual because of his race, color, religion, sex, age, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

15.2.4 That a copy of this Ordinance shall be furnished all suppliers and made a part of all bid specifications.

15.2.5 This Ordinance shall take effect after it is signed, published and recorded, as required by law.

15.3 Temporary Street Closing or Blockage

The CONTRACTOR will notify the CONSULTANT at least 72 hours prior to making any temporary street closing or blockage. This will permit orderly notification to all concerned public agencies. Specific details and restrictions on street closure or blockage are contained in the Special Conditions.

15.4 Percentage of Work Performed by prime CONTRACTOR

The CONTRACTOR shall perform on site, and with its own organization, Work equivalent to at least fifty (50%) percent of the total amount of Work to be performed under the Contract. This percentage may be reduced by a supplemental agreement to this Contract if, during performing the Work, the CONTRACTOR requests a reduction and the CONSULTANT determines that the reduction would be to the advantage of the OWNER.

15.5 Clean-up

Cleanup shall progress, to the greatest degree practicable, throughout the course of the Work. The Work will not be considered as completed, and final payment will not be made, until the right-of-way and all ground occupied or affected by the Contractor in connection with the Work has been cleared of all rubbish, equipment, excess materials, temporary structures, and weeds. Rubbish and all waste materials of whatever nature shall be disposed of, off of the project site, in an acceptable manner. All property, both public and private, which has been damaged in the prosecution of the Work, shall be restored in an acceptable manner. All areas shall be draining, and all drainage ways shall be left unobstructed, and in such a condition that drift will not collect or scour be induced.

15.6 General

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 12.1, 12.3.5, 13.3, and 15.2 and all of the rights and remedies available to OWNER and CONSULTANT thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies

available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Agreement.

15.7 Debris Disposal

For all LFUCG projects any trash, construction demolition debris, yard waste, dirt or debris of any kind that is removed from the project site must be disposed of in accordance with local, state, and federal regulations. The disposal site or facility must be approved in advance by the LFUCG and disposal documentation is required. The Contractor will be responsible for payment of any fines associated with improper disposal of material removed from the project site.

END OF SECTION

EXHIBIT C

PERFORMANCE AND PAYMENT BONDS

1. PERFORMANCE BOND
2. PAYMENT BOND

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that

(Name of CONTRACTOR)

(Address of CONTRACTOR)

a _____
hereinafter
(Corporation, Partnership, or Individual)

called Principal, and

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
200 East Main Street, Third Floor
Lexington, Kentucky 40507

hereinafter called "OWNER" in the penal sum of _____
Dollars, (\$ _____), for the payment of whereof Principal and Surety bind themselves,
their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these
presents.

WHEREAS, Principal by written agreement is entering into a Contract with OWNER for the
Family Care Center Roof Replacement in accordance with drawings and specifications
prepared by: **Garland/DBS Inc.** which Contract is by reference made a part hereof, and is
hereinafter referred to as the Contract.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal
shall promptly and faithfully perform said Contract, then this obligation shall be null and void;
otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the OWNER.

Whenever, Principal shall be, and declared by OWNER to be in default under the Contract, the OWNER having performed OWNER'S obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) Complete the Contract in accordance with its terms and conditions or
- (2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or if the OWNER elects, upon determination by the OWNER and Surety jointly of the lowest responsible bidder, arrange for a Contract between such bidder and OWNER, and make available as Work progresses (even though there may be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price", as used in this paragraph shall mean the total amount payable by OWNER to Principal under the Contract and any amendments thereto, less the amount properly paid by OWNER to Principal.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the OWNER named herein or the heirs, executors, administrators or successors of OWNER.

IN WITNESS WHEREOF, this instrument is executed in _____ each one of which shall be

deemed an original, this the _____ day of _____, 20_____.
(number)

ATTEST:

(Principal) Secretary

Principal

BY: _____ (s)

(Address)

Witness as to Principal

(Address)

ATTEST:

(Surety) Secretary

Surety

BY: _____
Attorney-in-Fact

(SEAL)

(Address)

Witness as to Surety

(Address)

TITLE: _____

Surety

BY: _____

TITLE: _____

NOTE: The number of executed counterparts of the bond shall coincide with the number of executed counterparts of the Contract.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that

_____ (Name of CONTRACTOR)

_____ (Address of CONTRACTOR)

a _____ hereinafter

(Corporation, Partnership, or Individual)

called Principal, and

_____ (Name of Surety)

_____ (Address of Surety)

hereinafter called Surety, are held and firmly bound unto

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
200 East Main Street, Third Floor
Lexington, Kentucky 40507

Obligee, hereinafter called OWNER, for the use and benefit of claimants as hereinafter defined, in the amount of _____ Dollars (\$ _____) the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal by written agreement is entering into a Contract with OWNER for the **Family Care Center Roof Replacement** in accordance with drawings and specifications prepared by: **Garland/DBS Inc.** which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions.

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above named Principal and Surety hereby jointly and severally agree with the OWNER that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The OWNER shall not be liable for the payment of any costs, or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - (a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the OWNER, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the Work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the Work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, OWNER, or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.
 - (b) After the expiration of one (1) year following the date on which Principal ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - (c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against aid improvement, whether or not claim for the amount of such lien be presented under and against this bond.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts,
each one of

(number)

which shall be deemed an original, this the _____ day of _____, 20_____.

ATTEST:

(Principal) Secretary

(Principal)

(SEAL)

BY: _____ (s)

(Address)

(Witness to Principal)

(Address)

(Surety)

ATTEST:

BY: _____
(Attorney-in-Fact)

(Surety) Secretary

(SEAL)

Witness as to Surety

(Address)

(Address)

NOTE: The number of executed counterparts of the bond shall coincide with the number of
executed counterparts of the Contract.

END OF SECTION

EXHIBIT D
SPECIAL CONDITIONS

- 1 RISK MANAGEMENT PROVISIONS –
INSURANCE AND INDEMNIFICATION
- 2 WAGE SCALE (if applicable)
- 3 WEATHER RELATED DELAYS

1. **RISK MANAGEMENT PROVISIONS**
INSURANCE AND INDEMNIFICATION

INDEMNIFICATION AND HOLD HARMLESS PROVISION

(1) It is understood and agreed by the parties that Contractor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "CONTRACTOR") under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.

(2) CONTRACTOR shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "LFUCG") from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by CONTRACTOR's performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the CONTRACTOR; and (b) not caused solely by the active negligence or willful misconduct of LFUCG.

(3) In the event LFUCG is alleged to be liable based upon the above, CONTRACTOR shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by LFUCG, which approval shall not be unreasonably withheld.

(4) These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.

(5) LFUCG is a political subdivision of the Commonwealth of Kentucky. CONTRACTOR acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend the CONTRACTOR in any manner.

FINANCIAL RESPONSIBILITY

BIDDER/CONTRACTOR understands and agrees that it shall, prior to final acceptance of its bid and the commencement of any work, demonstrate the ability to assure compliance with the above Indemnity provisions and these other risk management provisions.

INSURANCE REQUIREMENTS

YOUR ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW, AND YOU MAY NEED TO CONFER WITH YOUR INSURANCE AGENTS, BROKERS, OR CARRIERS TO DETERMINE IN ADVANCE OF SUBMISSION OF A RESPONSE THE AVAILABILITY OF THE INSURANCE COVERAGES AND ENDORSEMENTS REQUIRED HEREIN. IF YOU FAIL TO COMPLY WITH THE INSURANCE REQUIREMENTS BELOW, YOU MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.

Required Insurance Coverage

BIDDER/CONTRACTOR shall procure and maintain for the duration of this contract the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to LFUCG in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONTRACTOR. The cost of such insurance shall be included in any bid:

<u>Coverage</u>	<u>Limits</u>
General Liability aggregate (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million or \$2 million combined single limit
Commercial Automobile Liability occurrence (Insurance Services Office Form CA 0001)	combined single, \$1 million per
Worker's Compensation	Statutory
Employer's Liability	\$100,000.00
Excess/Umbrella Liability	\$5 million per occurrence

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky (DOI). LFUCG shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.

c. The General Liability Policy shall include a Products and Completed Operations endorsement or Premises and Operations Liability endorsement unless it is deemed not to apply by LFUCG.

d. LFUCG shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.

e. Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

Renewals

After insurance has been approved by LFUCG, evidence of renewal of an expiring policy must be submitted to LFUCG, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

Deductibles and Self-Insured Programs

IF YOU INTEND TO SUBMIT A SELF-INSURANCE PLAN IT MUST BE FORWARDED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, DIVISION OF RISK MANAGEMENT, 200 EAST MAIN STREET, LEXINGTON, KENTUCKY 40507 NO LATER THAN A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO THE RESPONSE DATE. Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government's Division of Risk Management, upon review of evidence of BIDDER/CONTRACTOR's financial capacity to respond to claims. Any such programs or retentions must provide LFUCG with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If BIDDER/CONTRACTOR satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, BIDDER/CONTRACTOR agrees to provide Lexington-Fayette Urban County Government, Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:

- a. Latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.
- c. Actuarial funding reports or retained losses.

- d. Risk Management Manual or a description of the self-insurance and risk management program.
- e. A claim loss run summary for the previous five (5) years.
- f. Self-Insured Associations will be considered.

Safety and Loss Control

CONTRACTOR shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and LFUCG.

Verification of Coverage

BIDDER/CONTRACTOR agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide LFUCG copies of all insurance policies, including all endorsements.

Right to Review, Audit and Inspect

CONTRACTOR understands and agrees that LFUCG may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

DEFAULT

BIDDER/CONTRACTOR understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that LFUCG may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging BIDDER/CONTRACTOR for any such insurance premiums purchased, or suspending or terminating the work.

00357187

2. **WAGE SCALES** – not applicable.

3. **WEATHER RELATED DELAYS**

- A. The Project Completion date shall be established with the understanding that no extension of time will be granted for weather related delays that are within the average temperature or number of rain or snow days within a particular month. The average weather conditions shall be established by referencing the records of the National Oceanic and Atmospheric Administration (NOAA) and as defined herein.
- B. Extensions of inclement weather shall be granted only when the work affected must be on schedule at the time of delay. No time will be granted for work which is behind schedule in excess of the actual delay caused by the weather, assuming the work had been on schedule.
- C. Time granted for weather delays shall be requested on a monthly basis.
- D. The weather experienced at the project site during the contract period must be found to be unusually severe, that is more severe than the adverse weather anticipated for the project location during any given month. The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the contractor.
- E. The anticipated adverse weather delays shall be based on the National Oceanic and Atmospheric Administration (NOAA) climatology ten year average for the Lexington Bluegrass Airport KY US location. The Mean Number of Days of daily precipitation using ≥ 0.10 will determine the base line for monthly anticipated adverse weather evaluations. The contractor's progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities. Upon acknowledgement of the Notice to Proceed (NTP) and continuing throughout the contract, the contractor will record the occurrence of actual adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical path activities for 50 percent or more of the contractor's scheduled work date. The number of actual adverse weather delay days shall be calculated chronologically from the first to the last day of each month, and be recorded as full days. The number of actual adverse weather days greater than the number of anticipated adverse weather days, listed above, shall be the number of unusually severe weather days for the purposes of any contract extensions (actual adverse weather days - anticipated adverse weather days = unusually severe weather days.)
- F. Definitions:

1. "Unusually severe weather" - weather that is more severe than the adverse weather anticipated for the season or location involved.
2. "Adverse weather" - atmospheric conditions at a definite time and place that are unfavorable to construction activities.

END OF SECTION

**ROOFING SUPPLIES AND SERVICES,
WATERPROOFING, AND RELATED
PRODUCTS AND SERVICES CONTRACT 2019**

This Contract made and entered into this 27 day of September, 2019,
by and between Racine County, Wisconsin, 730 Wisconsin Avenue, Racine, Wisconsin 53403
(hereinafter referred to as "COUNTY") and Garland/DBS, Inc., 3800 East 91st Street,
Cleveland, Ohio 44105 (hereinafter referred to as "CONTRACTOR").

W I T N E S S E T H:

For good and valuable consideration, the parties agree as follows:

1. **WORK:** CONTRACTOR shall provide ROOFING SUPPLIES AND SERVICES,
WATERPROOFING AND RELATED PRODUCTS AND SERVICES:

The undersigned parties understand and agree to comply with and be bound by the entire contents of Sealed Bid # PW1925: ROOFING SUPPLIES AND SERVICES, WATERPROOFING AND RELATED PRODUCTS AND SERVICES PROJECT MANUAL (aka, the Contractor's Bid Proposal submitted September 4, 2019) which is incorporated herein by reference. CONTRACTOR understands and agrees that the bonds and insurance required by the Project Manual are to be kept current at all times through the length of each term and for 90 Days following completion of each term. Bonds and insurance must be renewed and presented to the COUNTY at the time of each renewal term if COUNTY chooses to renew. Bonds and insurance shall be written by a firm acceptable to the COUNTY as specified in the Project Manual.

2. **TERM:** October 15, 2019, to October 14, 2024, with full renewal of one (1) additional five (5) year term per the Project Manual. COUNTY shall exercise renewal options by issuance and delivery to CONTRACTOR of a written notice to renew this Agreement.
3. **PROJECT:** ROOFING SUPPLIES AND SERVICES, WATERPROOFING AND RELATED PRODUCTS AND SERVICES in accordance with the Project Manual.
4. **PRICE:** Price as stated for all schedules included in the Project Manual.

5. **CANCELLATION:** This contract may be cancelled without penalty or obligation of any kind, by COUNTY by, for or on behalf of itself or its agencies, departments, officers, agents or employees immediately upon written notice to all parties that sufficient funds have not been budgeted by the County Board of Supervisors to pay the obligations under this agreement.

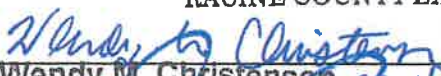
Either party may terminate the contract on the anniversary date in any subsequent year of the contract by providing the other party with written notice ninety (90) days prior to the anniversary date.

If the CONTRACTOR fails to maintain and keep in force required insurance, COUNTY shall have the right to cancel and terminate the contract without notice.

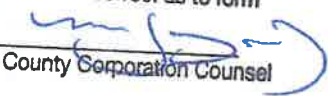
Notwithstanding any of the terms and conditions contained herein, the COUNTY and CONTRACTOR reserve the right to terminate the contract at any time for any reason by providing written notice of termination to the other party no less than ninety (90) days in advance of termination. In the event of said termination, CONTRACTOR shall not reduce its activities hereunder unless agreed in advance by COUNTY. The CONTRACTOR will pay according to the contract for services tendered through the date of termination.

RACINE COUNTY

BY: 
JONATHAN DELAGRAVE
RACINE COUNTY EXECUTIVE

BY: 
Wendy M. Christensen 9/25/19
Racine County Clerk

GARLAND/DBS Inc.
BY: 
David M. Sokol, President

Date 9-27-19
Certified to be correct as to form
By 
Racine County Corporation Counsel

REVIEWED BY FINANCE DIRECTOR
 9/27/19
Sign Date



Garland/DBS, Inc.
3800 East 91st Street
Cleveland, OH 44105
Phone: (800) 762-8225
Fax: (216) 883-2055



ROOFING MATERIAL AND SERVICES PROPOSAL

LFUCG Family Care Center
The City of Lexington
1135 Harry Sykes Way
Lexington, KY 40508

Date Submitted: 11/22/2021
Proposal #: 25-KY-211149
MICPA # PW1925

Purchase orders to be made out to: Garland/DBS, Inc.

Please Note: The following budget/estimate is being provided according to the pricing established under the Master Intergovernmental Cooperative Purchasing Agreement (MICPA) with Racine County, WI and OMNIA Partners, Public Sector (U.S. Communities). The line item pricing breakdown from Attachment C: Bid Form should be viewed as the maximum price an agency will be charged under the agreement. Garland/DBS, Inc. administered an informal competitive process for obtaining quotes for the project with the hopes of providing a lower market-adjusted price whenever possible.

Scope of Work: Repair

1. Provide all labor, equipment, and materials to install the roof system over the properly prepared substrate.
 - a. Provide carbon filters for all roof top units throughout the duration of the project.
 - i. Disclaimer: The roofing contractor is responsible for completing all work associated with the Contract Documents unless specified to be performed by a different contractor below.
2. Wet-Vacuum the entire roof surface. Eliminate all loose pea gravel from the surface of the roof.
 - a. Spud down any high areas of adhered asphalt and gravel to insure a smooth substrate.
- 3 For each wet roofing area as marked by the provided infrared scan:
 - a. Remove existing roofing and insulation layers down to the metal deck for all areas marked wet provided by an infrared scan.

- b. Fill these areas with poly-iso insulation to match the insulation height and taper design of the area.
 - c. Install insulation layers with mechanical fasteners per uplift calculations.
 - d. Plug drains to prevent debris from entering plumbing.
 - i. Base Bid to include 2000 sf of wet roofing removal/replacement.
 - ii. Provide a unit cost for price per sq ft for wet insulation removal in addition to the 2000 sf that is to be included in the base bid per DBS bid form.
4. All Drains to be replaced by plumbing contractor: (plumbing scope below)
- a. Coordinate as needed with all trades.
 - b. New Drains to have all new bowls, piping below, drain strainers, bolts, clamping rings, etc.
 - c. Coordinate drain height to be located as close to the deck as possible with a wood nailer below.
 - d. Plug each drain during installation of roofing and unplug before end of each day.
 - e. Remove all roofing materials and insulation at each drain 6 ft in each direction. Spud the remaining gravel for the related roofing area down to the existing membrane - 12 inches past the edge of the patch on all sides. This will provide a clean membrane for the patch to be sealed into the existing roofing membrane.
 - f. Using rigid & tapered poly iso insulation create a 4 ft x 4 ft sump area starting at the height of the drain.
5. Remove existing metal coping cap.
- a. Remove all present wood blocking if present and install one layer of continuous 2x treated wood blocking. All new wood blocking is to be of treated lumber.
 - b. Provide temporary water proofing membrane over all parapet walls as needed if not flashed the same day.
6. Remove all existing flashings around all roof perimeter edges and all curb penetrations to the substrate.
- a. Replace wood blocking as need per unit cost. All present wood blocking is to be replaced with new treated wood 2x blocking of the same dimension as currently present.
 - b. Provide unit cost for replacement of wood blocking (non-treated 2x) per DBS bid form.
7. Prime existing roof with insulation adhesive primer.
8. Install ½ inch densdeck prime recovery board over existing roof and parapet walls (use fasteners to fasten wall board commonly. Taper the edges of the
9. Install a 60 mil full adhered EPDM roof over the densdeck prime using the required adhesive.

- a. The membrane flashing should run over the top of the parapet walls and turn down the front face of the parapet wall 8 inches oc.
10. Install Garland's pre-manufactured metal coping system.
- a. Standard color chosen by client.
 - b. Follow manufacturer's installation guidelines.
 - c. 2x wood blocking required to be present to fasten coping chairs into.

Note 1: During the project roofing contractor will be required to fence in the material and staging area while onsite and keep the fenced area locked while not on-site. Lifts shall be stored in the contractor staging area when not in use.

Note 2: There will be an additional IR Scan performed by Garland/DBS prior to the start of the project to verify the current IR Scan. Any additional wet insulation that is detected will be marked on the roof.

Scope of Work: Removal of Skylight

1. Remove the roof membrane along the flashing and cut out the rigid insulation as required to expose the metal roof deck around the skylight.
2. Remove the skylight and dispose.
3. Install a section of new roof deck to cover the openings and overlap (6 to 9") the existing deck and support framing. The new metal roof deck shall match the profile of the existing metal. Use 20 gage galvanized deck with a minimum steel yield strength of 33 ksi. Fasten Deck through the existing deck and into the support steel members using #12 TEK Screws at 6 inches (max) or center and use three (min) #10 at side laps.
4. Seal the new deck pieces together and to the existing deck with butyl tape and waterproof caulking.
5. Install new rigid insulation over the enclosed opening (new deck). Insulation shall match the existing thickness and slope. Attach insulation to metal deck to match the surrounds roof areas using mechanical fasteners.
6. Interior finish repairs associated with the removal of the skylights shall be performed by the Owner.
7. Refer to sketched attached in the Bid Package.

Plumbing

1. Plumber will work directly under Garland/DBS.
2. Plumber will work with awarded roofing contractor to coordinate the scope of
3. Plumbing Scope of work.
 - a. Disconnect and remove existing roof drains and accessories.
 - b. Provide and install new roof drains of the same size as existing and all related accessories.

- c. Roof drains will have plastic domes.
- d. 2-3 Drains will be completed per day based on the roofing contractor' schedule.
- e. Roof drains will be insulated on the underside of the drains, cast iron 90's and all piping.
- f. Plumber will replace section of pipe between roof drain and 90, cast iron 90 and 1' section past the 90.
- g. All interior lifts will be covered during regular installation time.

Interior protection

- 1. Interior protection company will work directly under Garland/DBS.
- 2. A sub-contractor specializing in interior protection specifically to provide 15'x15' tarps at each skylight replacement area only. The interior protection shall be installed per manufacturer recommendations. This is not to be included in the roofers proposal and will be provided by Garland with a separate contractor.

Roofing Work:

Proposal Price Based Upon Market Experience: \$ 1,072,630

Garland/DBS Price Based Upon Local Market Competition:

Pearce Blackburn Roofing	\$ 1,072,630
Tri-State Roofing & Sheet Metal Company	\$ 1,104,266
The Bri-Den Co., Inc.	\$ 1,188,352
ABR Construction, Inc.	\$ 1,226,960

Plumbing Work - Replacement of Twenty Seven (27) Roof Drains:

Proposal Price (Ivey Mechanical Company, LLC): \$ 54,545

Interior Protection:

Proposal Price (TuffWrap Installations, Inc.): \$ 13,832

COMBINED TOTAL PRICE:

Proposal Price Based Upon Market Experience: \$ 1,141,007

Unforeseen Site Conditions:

Wood Blocking (Nailer) Replacement	\$	2.28	per Ln. Ft.
Additional Insulation Replacement	\$	3.99	per Sq. Ft.
Decking Replacement	\$	11.40	per Sq. Ft.

Potential issues that could arise during the construction phase of the project will be addressed via unit pricing for additional work beyond the scope of the specifications. This could range anywhere from wet insulation, to the replacement of deteriorated wood nailers. Please Note – The construction industry is experiencing unprecedented global pricing and availability pressures for many key building components. Specifically, the roofing industry is currently experiencing long lead times and significant price increases with roofing insulation and roofing fasteners. Therefore, this proposal can only be held for 30 days. Garland/DBS greatly values your business, and we are working diligently with our long-term suppliers to minimize price increases and project delays which could effect your project. Thank you for your understanding and cooperation.

Clarifications/Exclusions:

1. Permits are excluded.
2. Bonds are included.
3. Plumbing is included. Mechanical and Electrical work is excluded.
4. Masonry work is excluded.
5. Prevailing Wages are excluded.
6. Any work not exclusively described in the above proposal scope of work is

If you have any questions regarding this proposal, please do not hesitate to call me at my number listed below.

Respectfully Submitted,

Antonio Montemarano

Antonio Montemarano
Garland/DBS, Inc.
(216) 430-3606

FAMILY CARE CENTER - ROOF REPLACEMENT

Task	Duration	Start	Finish
Advertisement	12 Days	11/11/2021	11/23/2021
Pre-Bid Meeting	1 Day	11/11/2021	11/11/2021
Garland Receives Bids	1 Day	11/23/2021	11/23/2021
Garland Bid Evaluation	6 Day	11/23/2021	11/29/2021
Garland/LFUCG Bid Review Zoom Meeting	1 Day	11/29/2021	11/29/2021
LFUCG Bid Evaluation /Law & Purchasing Review/Contract	1 Days	11/29/2021	11/29/2021
Blue sheet	1 Days	11/29/2021	11/29/2021
Approved in Legistar Date	1 Day	11/29/2021	11/29/2021
Council WS	1 Day	12/7/2021	12/7/2021
Council 1st Reading	1 Day	12/7/2021	12/7/2021
Council 2nd Reading	1 Day	12/7/2021	12/7/2021
P.O. & NTP	1 Days	2/16/2022	2/16/2022
Construction Phase	165 Days	2/16/2022	7/31/2022
PreConstruction Meeting	1 Days	2/16/2022	2/16/2022
Construction Phase	150 Days	2/16/2022	7/16/2022
Substantial Completion/Punch Inspection	1 Days	7/16/2022	7/16/2022
Final Completion	15 Days	7/16/2022	7/31/2022

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

Bond Number: 30131345

CONTRACTOR:

(Name, legal status and address)

Garland/DBS, Inc.
3800 East 91st Street
Cleveland, OH 44105

SURETY:

(Name, legal status and principal place of business)

Western Surety Company
151 N Franklin Street
Chicago, IL 60606
State of Inc: South Dakota

OWNER:

(Name, legal status and address)

Lexington Fayette Urban County Government
200 East Main Street
Lexington, KY 40507

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT

Date: November 29, 2021

Amount: \$1,141,007.00

Description: (Name and location)

Family Care Center - 25-KY-211149

BOND

Date: November 29, 2021

(Not earlier than Construction Contract Date)

Amount: \$1,141,007.00



Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)
Garland/DBS, Inc.

Signature:

Name: Scott Lofke

And Title: VP/GM

(Any additional signatures appear on the last page of this Performance Bond)

SURETY

Company: (Corporate Seal)
Western Surety Company

Signature:

Name: Cathy L. Woodruff

And Title:

Cathy L. Woodruff, Attorney-in-Fact

(FOR INFORMATION ONLY – Name, address and telephone)

AGENT or BROKER:

Marsh

Marsh USA Inc.
200 Public Square
Cleveland, OH 44114
216-937-1379

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____
(Corporate Seal)

Company: _____
(Corporate Seal)

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

Bond Number: 30131345

CONTRACTOR:

(Name, legal status and address)

Garland/DBS, Inc.
3800 East 91st Street
Cleveland, OH 44105

SURETY:

(Name, legal status and principal place of business)

Western Surety Company
151 N Franklin Street
Chicago, IL 60606
State of Inc: South Dakota

OWNER:

(Name, legal status and address)

Lexington Fayette Urban County Government
200 East Main Street
Lexington, KY 40507

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT

Date: November 29, 2021

Amount: \$1,141,007.00

Description: (Name and location)

Family Care Center - 25-KY-211149

BOND

Date: November 29, 2021

(Not earlier than Construction Contract Date)

Amount: \$1,141,007.00




Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Garland/DBS, Inc.

Signature: 

Name: Scott Croft

And Title: VP/Gen

(Any additional signatures appear on the last page of this Payment Bond)

SURETY

Company:

(Corporate Seal)

Western Surety Company

Signature: 

Name:

Cathy L. Woodruff, Attorney-in-Fact

And Title:

(FOR INFORMATION ONLY – Name, address and telephone)

AGENT or BROKER:

Marsh USA Inc.
200 Public Square
Cleveland, OH 44114

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any

Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of the Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____

Signature: _____

Name and Title:

Name and Title:

Address

Address

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint Cathy L. Woodruff

, Individually

of Cleveland, Ohio, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

Surety Bond Number: 30131345
Principal: Garland/DBS, Inc.
Obligee: Lexington Fayette Urban County

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 2nd day of February, 2021.

WESTERN SURETY COMPANY

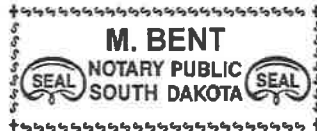


Paul T. Bruflat
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 2nd day of February, 2021, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
March 2, 2026



M. Bent
M. Bent, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 29 day of November, 2021.



WESTERN SURETY COMPANY

L. Nelson
L. Nelson, Assistant Secretary

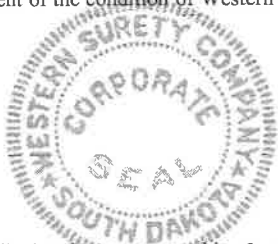
WESTERN SURETY COMPANY
Sioux Falls, South Dakota
Statement of Net Admitted Assets and Liabilities
December 31, 2020

<u>ASSETS</u>	
Bonds	\$ 1,912,532,179
Stocks	25,319,501
Cash, cash equivalents, and short-term investments	40,409,249
Receivables for securities	-
Investment income due and accrued	17,596,947
Premiums and considerations	66,346,899
Amounts recoverable from reinsurers	3,171,900
Current federal and foreign income tax recoverable and interest thereon	2,464,571
Net deferred tax asset	14,052,177
Receivable from parent, subsidiaries, and affiliates	12,599,707
Other assets	-
Total Assets	\$ 2,094,493,130

<u>LIABILITIES AND SURPLUS</u>	
Losses	\$ 215,792,050
Loss adjustment expense	51,323,326
Commissions payable, contingent commissions and other similar charges	10,245,562
Other expenses (excluding taxes, license and fees)	-
Taxes, License and fees (excluding federal and foreign income taxes)	3,169,742
Federal and foreign income taxes payable	-
Unearned premiums	256,859,522
Advance premiums	5,954,577
Ceded reinsurance premiums payable (net of ceding commissions)	977,849
Amounts withheld or retained by company for account of other	9,740,338
Provision for reinsurance	420,825
Payable to parent, subsidiaries and affiliates	2,297
Payable on security transactions	-
Other liabilities	31,467
Total Liabilities	\$ 554,517,555

Surplus Account:	
Common stock	\$ 4,000,000
Gross paid in and contributed surplus	280,071,837
Unassigned funds	1,255,903,739
Surplus as regards policyholders	\$ 1,539,975,575
Total Liabilities and Capital	\$ 2,094,493,130

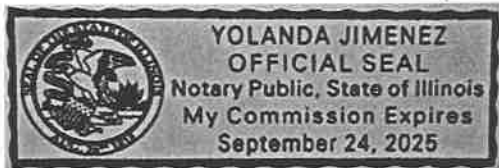
I, Julie Lee, Assistant Vice President of Western Surety Company hereby certify that the above is an accurate representation of the financial statement of the Company dated December 31, 2020, as filed with the various Insurance Departments and is a true and correct statement of the condition of Western Surety Company as of that date.



WESTERN SURETY COMPANY

By Julie Lee
Assistant Vice President, External Reporting

Subscribed and sworn to me this 9 day of April 2021
My commission expires:



By Yolanda Jimenez
Notary Public