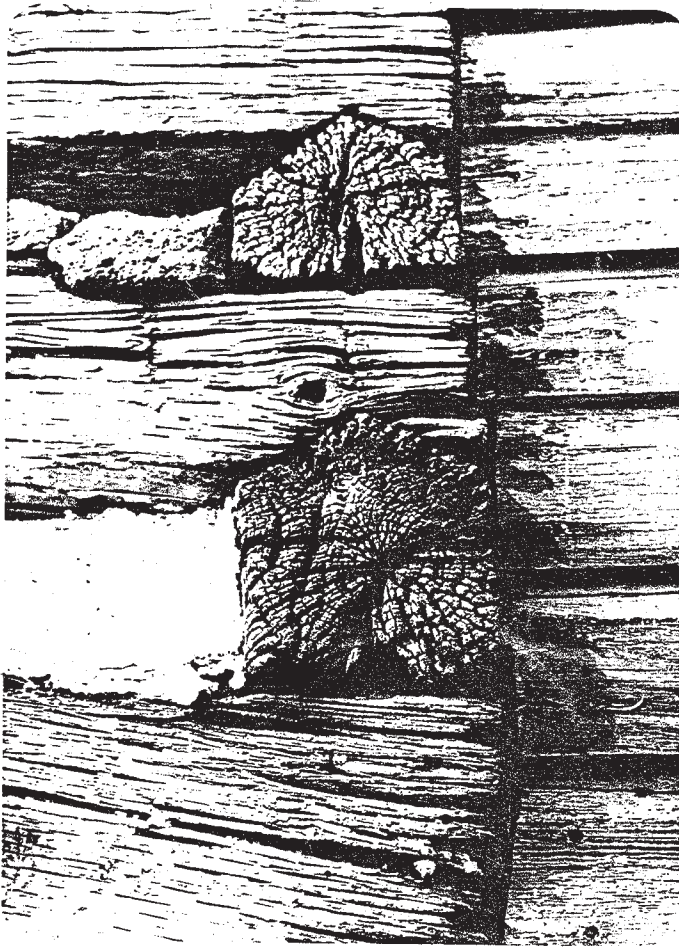


# COLLIER'S LOG HOUSE SPECIFICATIONS



*Changes to  
Specifications No. 1  
dtd 2-24-84*

**eleanor  
lakin  
architects**

879 Commonwealth Avenue  
Hagerstown, Maryland 21740

301 791-2922

COLLIER LOG HOUSE  
Catoctin Furnace  
Frederick County, Maryland

SPECIFICATIONS

ARCHITECT: Eleanor Lakin Architects  
879 Commonwealth Avenue  
Hagerstown, Maryland 21740  
  
(301) 791-2922

OWNER: Catoctin Furnace Historical Society, Inc.  
Clement E. Gardiner, President  
12320 Auburn Road  
Thurmont, Maryland 21788

21 August 1983

SET NO. 11

CATOCTIN FURNACE HISTORICAL SOCIETY, INC.  
CATOCTIN, MARYLAND

22 August 1983

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# CATOCTIN FURNACE HISTORICAL SOCIETY, INC.

THURMONT, MARYLAND 21788

12320 Auburn Road

## INVITATION FOR BIDS

*Adendum*  
*6H 2-24-84*

*II*

The Catoctin Furnace Historical Society, Inc., Catoctin, Frederick County, Maryland, will receive sealed bids until 3 P.M. Monday, March 5, 1984 at the office of the Architect at 879 Commonwealth Avenue, Hagerstown, Maryland; at which time and place all bids will be publicly opened and read aloud for the following work: Phase I work for the restoration of the Collier Log House located on a site in the town of Catoctin Furnace in Frederick County, Maryland. The two-story Collier Log House contains approximately 1690 square feet it was built in two sections with an attic space and no basement. Both sections of the house are constructed with stone foundations, log exterior walls with wood chinking and mortar in-fil between the logs; wood floor joists with plank wood flooring applied directly to the structure; wood ceiling and roof rafters; interior wood frame with wood lath and plaster; a tin roof; (one) brick interior chimney and fireplace and (one) combination stone fireplace and brick chimney. Phase I work will include minor demolition and removal of debris; sitework to include limited fill and grading and installation underground drainage; new stone and concrete block foundation; new stone and concrete block foundation walls and concrete footings; replacement of deteriorated logs in the exterior walls; replacement of deteriorated wood floor joists and flooring on the 1st floor; re-chinking and mortaring between the logs; replacement of 6/6 wood windows, doors and exterior trim; wood shingle roof and flashing; repair and rebuilding of chimneys and installation of flue liners; all as required and as shown on the Contract Documents.



## CATOCTIN FURNACE HISTORICAL SOCIETY, INC.

THURMONT, MARYLAND 21788  
12320 Auburn Road

### INVITATION FOR BIDS

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Proposed forms of Contract Documents including detailed specifications may be obtained at the office of Eleanor Lakin Architects AIA, 879 Commonwealth Avenue, Hagerstown, Maryland. General Contractors may obtain (2) two sets of Documents at a cost of \$30.00 per set; non refundable.

Bid guaranty in the amount of (5%) five percent of the bid shall be submitted with each bid. The successful bidder will be required to furnish satisfactory Performance and Payment Bonds.

A Pre-Bid conference will be held at the office of the Architect at 10:00 a.m. Tuesday, February 21, 1983, at 879 Commonwealth Avenue, Hagerstown, Maryland.

The Catoctin Furnace Historical Society, Inc. of Catoctin Furnace, Frederick County, Maryland, reserves the right to reject any or all bids and any or all Deduct Alternates or to waive informalities in the bidding. No bid shall be withdrawn for a period of (60) sixty days subsequent to the opening of the bids without the consent of the Catoctin Furnace Historical Society, Inc.

THE CATOCTIN FURNACE HISTORICAL  
SOCIETY, INC.

By: Clement E. Gardiner,  
President

## INSTRUCTIONS TO BIDDERS

### 1. SECURING DOCUMENTS

Copies of the proposed Contract Documents are on file at the office of the Architect:

Eleanor Lakin Architects AIA  
879 Commonwealth Avenue  
Hagerstown, Maryland 21740

Copies of the proposed Contract Documents may be obtained for bidding purposes upon the conditions set forth in The Invitation To Bid.

### 2. BID FORM

In order to receive consideration, make all bids in strict accordance with the following:

- (1) Make bids upon the forms provided therfor, properly executed and with all items filled out. Do not change the wording of the Bid Form and do not add words to the wording of the Bid Form. Unauthorized conditions, limitations, or provisions attached to the proposal shall be cause for rejection of the proposal.
- (2) No bids received after the time fixed for receiving them will be considered. Late bids will be returned to the sender upopened.
- (3) Each bid shall be addressed to the Owner and shall be delivered to the Owner at the address given in the Invitation to Bid, on or before the day and hour set for opening of bids. Each bid shall be enclosed in a sealed envelope bearing the title of work, the name of the bidder, and the date and hour of bid opening. It is the sole responsibility of the bidder to see that his bid is received on time.

### 3. BID BONDS

A bid bond in the amount of 5% of the proposed Contract Amount must accompany each proposal. All bid bonds shall be in the form included in the Specifications. The successful bidder's security will be retained until he has signed the Contract and furnished the required Labor and Materials Payment and Performance Bond. The Owner reserves the right to retain the security of the next lowest bidder until the lowest bidder enters into contract or until 60 days after bid opening, whichever is shorter. If any bidder refuses to enter into a Contract, the Owner will retain his bid bond as liquidated damages but not as a penalty.

### 4. OTHER BONDS

Prior to signing the Contract, the Owner will require the selected Contractor to secure and post a Labor and Materials Payment Bond and a Performance Bond; each in the amount of 100%



of the Contract Sum, and each on the forms provided in the Specifications.

5. EXAMINATION OF DRAWINGS, SPECIFICATIONS AND SITE OF WORK

Before submitting a bid, each bidder shall carefully examine the Drawings and read the Specifications and all other proposed Contract Documents, and visit the site of the work. Each bidder shall fully inform himself prior to bidding as to all existing conditions and limitations under which the Work is to be performed, and he shall include in his bid a sum to cover all costs of all items necessary to perform the work set forth in the proposed Contract Documents. No allowance will be made to any bidder because of lack of such examination or knowledge. The submission of a bid will be construed as conclusive evidence that the bidder has made such examination.

6. PROOF OF COMPETANCY OF BIDDER

Any bidder may be required to furnish evidence satisfactory to the Owner that he and his proposed subcontractors have sufficient means and experience in the types of work called for to assure completion of the Contract in a satisfactory manner.

7. WITHDRAWAL OF BIDS

Any bidder may withdraw his bid, either personally or by written request at any time prior to scheduled time for opening bids. No bidder may withdraw his bid for a period of 60 days after the bid date set for opening thereof; and all bids shall be subject to acceptance by the Owner during this period.

8. AWARD OR REJECTION OF BIDS

The contract, if awarded, will be awarded to the responsible bidder who has proposed the lowest Contract Sum; to include one or all of the Deduct Alternatives; subject to the Owner's right to reject any or all bids and to waive informality and irregularity in the bids and in the bidding.

9. EXECUTION OF THE AGREEMENT

The Form of Agreement which the successful bidder, as Contractor, will be required to execute is included in the Specifications.

- (1) At or prior to delivery of the signed Agreement, the Contractor shall deliver to the Owner the Labor and Materials Payment Bond, the Performance Bond, and the policies of insurance or insurance certificates as required by the Contract Documents. All Bonds and policies shall be approved by the Owner before the successful bidder may proceed with work.
- (2) Failure or refusal to furnish bonds or insurance policies or certificates in a form satisfactory to the Owner shall subject the bidder to loss of time from the allowable



construction period equal to the time of delay in furnishing the required material.

10. INTERPRETATION OF CONTRACT DOCUMENTS PRIOR TO BIDDING

If any person contemplating submitting a bid for construction of the Work is in doubt as to the true meaning of any part of the proposed Contract Documents, or finds discrepancies in or omissions from any part of the proposed Contract Documents, he may submit to the Architect a written request for interpretation thereof not later than 7 days before bids will be opened:

- (1) Interpretation or correction of proposed Contract Documents will be made only by Addendum, and will be mailed or delivered to each bidder of record.

11. PRE-BID CONFERENCE

A pre-bid conference will be held at a date and at the time and place designated in The Invitation To Bid.

12. CONSTRUCTION TIME AND LIQUIDATED DAMAGES

The Agreement will include a stipulation that the Work be completed in a period of 122 calendar days following the Notice To Proceed. The Agreement will also include a stipulation that the liquidated damages will be established in the amount of \$350.00 per calendar day for each calendar day after the completion date that the Work is not fully completed.

13. EXEMPTION CERTIFICATE

The Catoctin Furnace Historical Society, Inc. has been granted a Retail Sales Tax Exemption Certificate from the State of Maryland.



# CATOCTIN FURNACE HISTORICAL SOCIETY, INC.

THURMONT, MARYLAND 21788

12320 Auburn Road

DATE \_\_\_\_\_

## BID FORM INVITATION FOR BIDS

Sealed bids subject to the terms and conditions of this invitation and its specifications will be received at 879 Commonwealth Ave. Hagerstown, Maryland, until 3:00p.m., March 5, 1984 and at that time publicly opened for the following work: Phase II of the restoration of the Collier Log House located on a site within the Town of Catoctin Furnace, Frederick County, Maryland.

Clement E. Gardiner, President

BID

DATE \_\_\_\_\_

1. In compliance with the above Invitation for Bids, and subject to the General and Special Conditions, Summary of Work and Alternatives, Drawings and Specifications attached hereto and made a part thereof, the undersigned offers and agrees, if this bid be accepted within (60) sixty calendar days from the date of opening, to furnish all labor, materials and perform all work for Phase II of the project known as the Collier Log House located on a site within the Town of Catoctin Furnace, Frederick County, Maryland, for the following amount to be completed in 122 calendar days. Addenda received: \_\_\_\_\_, attached with Specification \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

Amount of Bid: \_\_\_\_\_

Alternate No. 1: If the Owner elects to proceed with Alternative No. 1; deduct the sum of: \_\_\_\_\_

Alternate No. 2: If the Owner elects to proceed with Alternative No. 2; deduct the sum of: \_\_\_\_\_

Invitation to Bids

Page - 2

Alternate No. 3: If the Owner elects to proceed with Alternative No. 3; deduct the sum of: \_\_\_\_\_.

Alternate No. 4: If the Owner elects to proceed with Alternative No. 4; deduct the sum of: \_\_\_\_\_.

Alternate No. 5: If the Owner elects to proceed with Alternative No. 5; deduct the sum of: \_\_\_\_\_.

BIDDER: \_\_\_\_\_

ADDRESS \_\_\_\_\_

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

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

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Signature of person  
authorized to sign bid

Registered Maryland Contractor No. \_\_\_\_\_

STATEMENT OF BIDDER'S QUALIFICATIONS  
(General Contractor)

All questions must be answered. The data given must be clear and comprehensive. This statement must be notarized.

1. Name of bidder \_\_\_\_\_
2. Business address \_\_\_\_\_
3. When organized \_\_\_\_\_
4. Where incorporated \_\_\_\_\_
5. How many years have you been engaged in the contracting business under your present firm or trading name? \_\_\_\_\_
6. Financial statement: (ATTACH SEPARATE SHEET)
7. Credit available for this contract: \$ \_\_\_\_\_  
ATTACH LETTER
8. Contracts now on hand, gross amount: \_\_\_\_\_
9. Plan of organization \_\_\_\_\_  
\_\_\_\_\_
10. Personnel of organization \_\_\_\_\_  
\_\_\_\_\_
11. Have you ever refused to sign a contract at your original bid? \_\_\_\_\_
12. Have you ever defaulted on a contract? \_\_\_\_\_
13. Remarks: \_\_\_\_\_
14. Will you, upon request furnish any other information that the Local Authority may require? \_\_\_\_\_

A F F I D A V I T

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being first duly sworn,  
deposes and says:

That he is \_\_\_\_\_  
(a partner or officer of the firm of, etc.)

the party making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid prices of affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Catoctin Furnace Historical Society, Frederick, Co. Maryland, or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

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

\_\_\_\_\_  
Title

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
My commission expires \_\_\_\_\_, 19\_\_\_\_.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, That we the undersigned:

\_\_\_\_\_  
as PRINCIPAL, and

\_\_\_\_\_, as SURETY

are held and firmly bound unto the Catoctin Furnace Historical Society, Catoctin, Maryland, hereinafter called the " Owner ", in the penal sum of \_\_\_\_\_ Dollars, lawful money of the United States, for the payment of which sum well and truly to be assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying bid, dated \_\_\_\_\_, 19\_\_\_\_, for \_\_\_\_\_

NOW, THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within sixty (60) days after the said opening, and shall within the period specified therefore, or, if no period be specified within ten (10) days after the prescribed forms are presented to him for signature, enter into a written contract with the " Owner" in accordance with the bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract; or in the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bond within the time specified, if the Principal shall pay the " Owner" the difference between the amount specified in said bid and the amount for which the " Owner" may procure the required work or supplies or both, if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS THEREOF, the above-bounden parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In presence of:

_____	_____ (SEAL)
_____	_____
_____	_____ (SEAL)
_____	_____

Attest:

_____	_____
_____	_____
_____	By _____ Affix corporate Seal

Attest:

_____	_____
_____	_____
_____	By _____ Affix corporate Seal

(Power-of-attorney for person signing for surety company must be attached to bond).

CERTIFICATE AS TO CORPORATE PRINCIPAL

1. \_\_\_\_\_, certify that I am the \_\_\_\_\_  
Secretary of the corporation named as  
Principal in the within bond; that \_\_\_\_\_, who  
signed the said bond on behalf of the Principal was then \_\_\_\_\_  
of said corporation; that I know his signature, and  
his signature thereto is genuine, and that said bond was duly  
signed, sealed, and attested to for and in behalf of said corporation  
by authority of its governing body.

(Corporate)  
( Seal )



PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That we the undersigned:

\_\_\_\_\_  
as PRINCIPAL, and

\_\_\_\_\_, as SURETY  
are held and firmly bound unto the Catoctin Furnace Historical Society  
Hagerstown, Maryland, hereinafter called the "Owner", in the  
penal sum of \_\_\_\_\_ Dollars,  
lawful money of the United States, for the payment of which sum well  
and truly to be assigns, jointly and severally, firmly by these presents:

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal  
has submitted the accompanying bid, dated \_\_\_\_\_, 19\_\_\_\_  
for \_\_\_\_\_

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor 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 Contractor 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 de-  
termination by Surety of the lowest responsible bidder,  
or, if the Owner elects, upon determination by the  
Owner and the 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 should 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 Contractor  
under the Contract and any amendments thereto, less  
the amount properly paid by Owner to Contractor.

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, adminis-  
trators or successors of the Owner.

IN WITNESS THEREOF, the above-bounden parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In presence of:

_____	_____ (SEAL)
_____	_____
_____	_____ (SEAL)
_____	_____

Attest:

_____	_____
_____	_____
_____	By _____ Affix corporate Seal

Attest:

_____	_____
_____	_____
_____	By _____ Affix corporate Seal

(Power-of-attorney for person signing for surety company must be attached to bond).

CERTIFICATE AS TO CORPORATE PRINCIPAL

1. \_\_\_\_\_, certify that I am the \_\_\_\_\_  
Secretary of the corporation named as  
Principal in the within bond; that \_\_\_\_\_, who  
signed the said bond on behalf of the Principal was then \_\_\_\_\_  
of said corporation; that I know his signature, and  
his signature thereto is genuine, and that said bond was duly  
signed, sealed, and attested to for and in behalf of said corporation  
by authority of its governing body.

\_\_\_\_\_  
(Corporate)  
( Seal )

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, That we the undersigned:

\_\_\_\_\_  
as PRINCIPAL, and

\_\_\_\_\_, as SURETY

are held and firmly bound unto the Catoctin Furnace Historical Society, Inc. Hagerstown, Maryland, hereinafter called the " Owner ", in the penal sum of \_\_\_\_\_ Dollars, lawful money of the United States, for the payment of which sum well and truly to be assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying bid, dated \_\_\_\_\_, 19\_\_\_\_, for \_\_\_\_\_

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 said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

IN WITNESS THEREOF, the above-bounden parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In presence of:

_____	_____ (SEAL)
_____	_____
_____	_____ (SEAL)
_____	_____

Attest:

_____	_____
_____	_____
_____	By _____ Affix corporate Seal

Attest:

_____	_____
_____	_____
_____	By _____ Affix corporate Seal

(Power-of-attorney for person signing for surety company must be attached to bond).

CERTIFICATE AS TO CORPORATE PRINCIPAL

1. \_\_\_\_\_, certify that I am the \_\_\_\_\_  
Secretary of the corporation named as  
Principal in the within bond; that \_\_\_\_\_, who  
signed the said bond on behalf of the Principal was then \_\_\_\_\_  
of said corporation; that I know his signature, and  
his signature thereto is genuine, and that said bond was duly  
signed, sealed, and attested to for and in behalf of said corporation  
by authority of its governing body.

\_\_\_\_\_  
(Corporate)  
( Seal )

THE AMERICAN INSTITUTE OF ARCHITECTS



---

AIA Document A101

**Standard Form of Agreement Between  
Owner and Contractor**

where the basis of payment is a  
**STIPULATED SUM**

**1977 EDITION**

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH  
AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION*

*Use only with the 1976 Edition of AIA Document A201, General Conditions of the Contract for Construction.*

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

---

**AGREEMENT**

made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of Nineteen  
Hundred and \_\_\_\_\_

**BETWEEN** the Owner:

and the Contractor:

The Project:

The Architect:

The Owner and the Contractor agree as set forth below.

---

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## **ARTICLE 1**

### **THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 7.

## **ARTICLE 2**

### **THE WORK**

The Contractor shall perform all the Work required by the Contract Documents for  
*(Here insert the caption descriptive of the Work as used on other Contract Documents.)*

## **ARTICLE 3**

### **TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

The Work to be performed under this Contract shall be commenced

and, subject to authorized adjustments, Substantial Completion shall be achieved not later than

*(Here insert any special provisions for liquidated damages relating to failure to complete on time.)*

**ARTICLE 4**  
**CONTRACT SUM**

The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of

The Contract Sum is determined as follows:

*(State here the base bid or other lump sum amount, accepted alternates, and unit prices, as applicable.)*

**ARTICLE 5**  
**PROGRESS PAYMENTS**

Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents for the period ending the \_\_\_\_\_ day of the month as follows:

Not later than \_\_\_\_\_ days following the end of the period covered by the Application for Payment  
\_\_\_\_\_ percent ( \_\_\_\_\_ %) of the portion of the Contract Sum properly allocable to labor, materials and  
equipment incorporated in the Work and \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the portion of the Contract  
Sum properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon  
in writing, for the period covered by the Application for Payment, less the aggregate of previous payments made by the  
Owner; and upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to  
\_\_\_\_\_ percent ( \_\_\_\_\_ %) of the Contract Sum, less such amounts as the Architect shall determine for all  
incomplete Work and unsettled claims as provided in the Contract Documents.

(If not covered elsewhere in the Contract Documents, here insert any provision for limiting or reducing the amount retained after the Work reaches a certain stage of completion.)

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate entered below, or in the absence thereof, at the legal rate prevailing at the place of the Project.

(Here insert any rate of interest agreed upon.)

*Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification, or other requirements such as written disclosures or waivers.)*



## ARTICLE 6

### **FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor when the Work has been completed, the Contract fully performed, and a final Certificate for Payment has been issued by the Architect.

## ARTICLE 7

### **MISCELLANEOUS PROVISIONS**

**7.1** Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

**7.2** The Contract Documents, which constitute the entire agreement between the Owner and the Contractor, are listed in Article 1 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

*(List below the Agreement, the Conditions of the Contract (General, Supplementary, and other Conditions), the Drawings, the Specifications, and any Addenda and accepted alternates, showing page or sheet numbers in all cases and dates where applicable.)*

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

OWNER

CONTRACTOR

\_\_\_\_\_

\_\_\_\_\_

BY

BY

\_\_\_\_\_

\_\_\_\_\_

Catoctin Furnace Historical Society  
National Park Service, U.S. Department of The Interior  
through the  
Maryland Historical Trust  
an agency of the  
Maryland Department of Economic and Community Development

Specifications and General Conditions concerning Procurement,  
Equal Employment Opportunity and Affirmative Action Requirements.

The following items are hereby incorporated and made part of the  
General Conditions and Specifications for this Contract:

INDEX

PROCUREMENT

pages 1 thru 3

EQUAL OPPORTUNITY

1. Equal Opportunity Clause (41-CFR 60-1.4) 4 thru 7  
(Applies to all Contracts and Subcontracts)
2. Equal Opportunity Clause (41-CFR 60-4.3) 7 thru 12

INSTRUCTIONS

1. Subcontractors and Vendors Notice 13 thru 14

c. The grantee's procurement system fails to comply with one or more significant aspects of this Attachment. The grantor agency shall notify the grantee of such deficiencies in writing, with a copy of such notification to the OFPP.

#### 7. CODE OF CONDUCT

Grantees shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The employee, officer or agent;
- b. Any member of his immediate family;
- c. His or her partner; or
- d. An organization which employs, or is about to employ, any of the above.

has a financial or other interest in the firm selected for award.

The grantee's and contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

#### 8. PROCUREMENT PROCEDURES

The grantee shall establish procurement procedures which provide for the following minimum requirements:

a. Proposed procurement actions shall be reviewed by grantee officials to consider consolidation of requirements to obtain a more economical purchase and to avoid unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease versus purchase alternatives, in-house or contracting out, and any other appropriate area of analysis to determine which approach would be the most economical. To foster greater economy and efficiency grantees are encouraged to enter into State and local intergovernmental agreements for procurement and/or use of common goods and services.

b. Affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of supplies and services. Affirmative steps shall include but not

be limited to the following:

- (1) Include qualified small and minority businesses on solicitation lists.
- (2) Assure that small and minority businesses are solicited whenever they are potential sources.
- (3) When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.
- (4) Establish delivery schedules which will encourage participation by small and minority business.
- (5) Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Service Administration.
- (6) If any subcontracts are to be let, require the prime contractor to take the affirmative steps in 1 through 5 above.

#### 9. SELECTION PROCEDURES

The grantee shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with this attachment. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to: (1) Placing unreasonable requirements on firms in order for them to qualify to do business, (2) noncompetitive practices between firms, and (3) organizational conflicts of interest.

a. Solicitations of offers, whether by competitive sealed bids or competitive negotiation, shall:

- (1) incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, may set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly specified.

(2) Clearly set forth all requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals.

b. Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, and financial and technical resources.

#### 10. METHOD OF PROCUREMENT

Procurement under grants shall be made by one of the following methods, as described herein: a. small purchase procedures; b. Competitive sealed bids; c. competitive negotiation; d. noncompetitive negotiation.

a. Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, or supplies or other property, costing in the aggregate not more than \$10,000. (State or local small purchase limits under \$10,000 shall be binding on grantees.) If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources.

b. In formal advertising, sealed bids are publicly solicited and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming exactly with all the material terms and conditions of the invitation for bids, is lowest in price.

(1) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

- (a) A complete adequate and realistic specification or purchase description is available.
- (b) Two or more responsible suppliers are willing and able to compete effectively for the grantee's business.
- (c) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(2) If formal advertising is used for a procurement under a grant, the following requirements shall apply:

- (a) Within a sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised. The invitation for bids including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(b) All bids shall be opened publicly at the time and place stated in the invitation.

...in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

c. In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is published. Negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

(1) Proposals including price, shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(2) Grantees shall provide for evaluation of the proposals, written or oral discussions as required, and selection for contract award.

(3) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

d. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of contract is infeasible under small purchase competitive bidding or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(1) The item is available only from a single source;

(2) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation; or

(3) The Federal grantor agency authorizes noncompetitive negotiation.

**21. CONTRACT PRICING**

The cost-plus-a-percentage-of-cost and percentage of construction cost method of contracting shall not be used. Grantees shall perform some form of cost or price analysis in con-

...of prices based on estimated costs for contracts under grant shall be allowed only to the extent that costs incurred or cost estimated included in negotiated prices are consistent with Federal cost principles.

**22. GRANTEE PROCUREMENT RECORDS**

Grantees shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, information pertinent to the following: Rationale for the method of procurement, selection of contract type, contractor selection, and the basis for the cost or price negotiated.

**23. CONTRACT PROVISIONS**

In addition to provisions defining a sound and complete procurement contract, any recipient of Federal grant funds shall include the following contract provisions or conditions in all procurement contracts:

a. Contracts shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

b. All contracts in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

c. All contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

d. All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick-Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from including, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

e. When required by the Federal grant program legislation, all con-

...shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to 2-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

f. Where applicable, all contracts awarded by grantees and subgrantees in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible: Provided, That the worker is compensated a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

g. Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters re-



h. All contracts (except those of \$15,000 or less) awarded by grantees shall include a provision to the effect that the grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

Grantees shall require contractors to maintain all required records for three years after grantees make final payments and all other pending matters are closed.

1. Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or requirements issued pursuant to section 206 of the Clean Air Act of 1970 and Section 508 of the Federal Pollution Control Act. Violations shall be reported to the grantor agency and the Regional Office of the Environmental Protection Agency.

2. Grantees shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State Energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-165).

#### 14. CONTRACT ADMINISTRATION

Grantees shall maintain a contract administration system insuring that contractors perform in accordance with the terms, conditions, and specifications of the contract or purchase orders.

[FR Doc 75-3254 Filed 12-5-78; 2:45 am]

[3110-01-M]

#### CLEARANCE OF REPORTS

##### List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on November 29, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the **FEDERAL REGISTER** is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form

number of respondents; the date, with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewer's division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

#### REVISIONS

##### DEPARTMENT OF AGRICULTURE

Food and Nutrition Service  
Model Food Stamp Forms  
On occasion  
Food stamp applicants and State agencies  
63,735,000 responses; 12,629,531 hours  
Ellett, C. A., 395-6152

##### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration  
Application Form-National Health Service Corps Scholarship  
On occasion  
Student scholarship application  
10,000 responses; 2,353 hours  
Richard Eltinger, 395-2214

#### EXTENSIONS

##### DEPARTMENT OF COMMERCE

Industry and Trade Administration  
Overseas Business Interest Questionnaire  
ITA-471P  
On occasion  
Businesses joining missions or seminars  
1,600 responses; 250 hours  
C. Louis Kincannon, 395-2211

##### DEPARTMENT OF LABOR

Employment Standards Administration  
Request for Examination and/or Treatment  
LS-1  
On occasion  
Employers and treating physicians  
200,000 responses; 66,667 hours  
Strasser, A., 395-6132  
Employment Standards Administration  
Notice of Employee's Injury or Death  
LS-201  
On occasion  
Injured employee or survivor  
240,000 responses; 60,000 hours

FRANK A. MALLORY,  
ADMINISTRATIVE  
MANAGEMENT CONSULTANT

[FR Doc. 78-34254 Filed 12-5-78; 2:45 am]

[7712-01-M]

#### POSTAL RATE COMMISSION

[Docket No. MC79-1]

#### MINIMUM HEIGHT FOR CARRIER-ROUTE PRESORTED MAIL

##### Order Instituting Proceedings

Issued November 30, 1978.

The proceeding under section 3623 of the Postal Reorganization Act (39 U.S.C. 3623) which we are instituting by this Order is designed to examine an issue suggested by the proceedings in Docket No. MC77-2—proceeding dealing generally with minimum size prohibitions, in which we are concurrently forwarding an Opinion and Recommended Decision to the Governors of the Postal Service. The present docket will be devoted to the question whether the 3½-inch minimum height which we are recommending be continued in effect<sup>1</sup> should be modified by reducing it to 3¼ inches where the mail pieces involved are presorted to carrier route.

Certain parties in Docket No. MC77-2 suggested modifications to the existing (though not yet effective) Domestic Mail Classification Schedule provision in the interest of presorted mail, but none directly addressed the question of mail presorted to carrier route. The closest approach to such a proposal was made by one public utility participant, which proposed a 3¼-inch minimum height to be applicable where the mail was sufficiently presorted to bypass machine processing in normal Postal Service operations. In our Opinion in Docket MC77-2 (pp. 60-61), we explain why a strict carrier-presort category is a more practical and desirable ground for potential distinction between applicable minima.

We are led to believe that the question of a 3¼-inch minimum height limit to carrier-route presorted mail needs exploration by two factors. First, it appears that a substantial number of firms, particularly including public utilities, may be using a billing card of that height. This was asserted by several parties in Docket No. MC77-2 and appears to be uncontroverted. Secondly, a statement made by

<sup>1</sup>The 3½-inch minimum height was announced in Docket MC73-1, where it formed part of the classification schedule stipulated to by the parties. It was not to go into effect until a subsequent time, however, and in Docket No. MC77-2 it was examined afresh. See generally PRC Op. MC77-2 (November 30, 1978).

## 41-CFR 60-1.4 Equal opportunity clause

The contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

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

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

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted

construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.



CHAPTER 60 - OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS  
EQUAL EMPLOYMENT OPPORTUNITY  
DEPARTMENT OF LABOR

D-4

PART 60-4-CONSTRUCTION CONTRACTORS  
AFFIRMATIVE ACTION REQUIREMENTS

AGENCY: Office of Federal Contract Compliance Programs, Labor.

60-4.2 Solicitations.

(a) All Federal contracting officers and all applicants shall include the notice set forth in paragraph (d) of this section and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth in 60-4.3 of this part in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts to be performed in geographical areas designated by the Director pursuant to 60-4.6 of this part. Administering agencies shall require the inclusion of the notice set forth in paragraph (d) of this section and the specifications set forth in 60-4.3 of this part as a condition of any grant, contract, sub-contract, loan insurance or guarantee involving federally assisted construction covered by this part 60-4.

(b) All nonconstruction contractors covered by Executive Order 11246 and the implementing regulations shall include the notice in paragraph (d) of this section in all construction agreements which are necessary in whole or in part to the performance of the covered nonconstruction contract.

(c) Contracting officers, applicants and nonconstruction contractors shall give written notice to the Director within 10 working days of award of a contract subject to these provisions. The notification shall include the name, address and telephone number of the contractor; employer identification number; dollar amount of the contract, estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed.

(d) The following notice shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to 60-4.6 of this part (see 41 CFR 60-4.2(a)):

NOTICE OF REQUIREMENT FOR AFFIRMATIVE  
ACTION TO ENSURE EQUAL EMPLOYMENT  
OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation in each trade
	Insert goals for each year.	Insert goals for each year.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

#### 60-4.3 Equal opportunity clauses.

(a) The equal opportunity clause published at 41 CFR 60-1.4(a) of this chapter is required to be included in, and is part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in, and is a part of, all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers, all applicants and all nonconstruction contractors, as applicable, shall include the specifications set forth in this section in all Federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to 60-4.6 of this part and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of nonconstruction Federal contracts and subcontracts covered under the Executive Order.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT  
SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
  - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast, Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.



f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for sub-contracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.



14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(b) The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR part 60-4 become effective.

## INSTRUCTIONS

### SUBCONTRACTORS AND VENDORS NOTICE

This notice is to be submitted by the prime contractor within ten(10) working days of contract award until all contracts and purchase orders have been awarded. When all awards have been made, check box marked "Final."

List all contracts and purchase orders awarded for construction trades, supplies, materials or services (including land development costs).

Column (1) - Enter the full name, address and telephone number, identification number of the contractor or vendor.

Column (2) - Enter the date of award

Column (3) - If the contract is for construction, specify the type of construction trade; e.g. excavation, painting, demolition; if the contract is for supplies, specify the type of supplies provided, e.g. janitorial, hardware, drywall, etc.; if the contract is for services, specify the type of service provided, e.g. research, legal, etc.

Column (4) - Enter the exact dollar amount of the contract or purchase order.

Column (5) - Indicate the estimated starting and completion dates for all construction trades to be performed on this project.

Column (6) - Check this column if the contractor is female or the firm has at least 50% female ownership.

Column (7) - Check this column if the contractor is a member of a minority group or is a firm owned at least 50% by members of a minority group. Minority group members include Black, Hispanic, American Indians or Alaskan Natives, Asian and Pacific Islanders.

Column (8) - NOTE - This column applies only to subsidized housing developments. Check this box if the contract is an eligible Section 3 business. If not, leave blank. An eligible Section 3 business is a small business concern located in the Section 3 covered project area or owned, in substantial part, by persons residing in the Section 3 covered project area. Refer to the Section 3 regulations (24 CFR Part 135, 10/23/75) for a more complete definition of terms.



# THE AMERICAN INSTITUTE OF ARCHITECTS



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AIA Document A201

## General Conditions of the Contract for Construction

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION  
WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS MODIFICATION*

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# GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

## ARTICLE 1

### CONTRACT DOCUMENTS

#### 1.1 DEFINITIONS

##### 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Architect pursuant to Subparagraph 2.2.8, or (4) a written order for a minor change in the Work issued by the Architect pursuant to Paragraph 12.4. The Contract Documents do not include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's Bid or portions of Addenda relating to any of these, or any other documents, unless specifically enumerated in the Owner-Contractor Agreement.

##### 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Architect and the Contractor, but the Architect shall be entitled to performance of obligations intended for his benefit, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Architect and any Subcontractor or Sub-subcontractor.

##### 1.1.3 THE WORK

The Work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

##### 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

#### 1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed in not less than triplicate by the Owner and Contractor. If either the Owner or the Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, the Architect shall identify such Documents.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

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

#### 1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All Drawings, Specifications and copies thereof furnished by the Architect are and shall remain his property. They are to be used only with respect to this Project and are not to be used on any other project. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Architect on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's common law copyright or other reserved rights.

## ARTICLE 2

### ARCHITECT

#### 2.1 DEFINITION

2.1.1 The Architect is the person lawfully licensed to practice architecture, or an entity lawfully practicing architecture identified as such in the Owner-Contractor Agreement, and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Architect means the Architect or his authorized representative.

#### 2.2 ADMINISTRATION OF THE CONTRACT

2.2.1 The Architect will provide administration of the Contract as hereinafter described.

2.2.2 The Architect will be the Owner's representative during construction and until final payment is due. The Architect will advise and consult with the Owner. The Owner's instructions to the Contractor shall be forwarded

through the Architect. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 2.2.18.

**2.2.3** The Architect will visit the site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of his on-site observations as an architect, he will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.

**2.2.4** The Architect will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

**2.2.5** The Architect shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Architect may perform his functions under the Contract Documents.

**2.2.6** Based on the Architect's observations and an evaluation of the Contractor's Applications for Payment, the Architect will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Paragraph 9.4.

**2.2.7** The Architect will be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and Contractor.

**2.2.8** The Architect will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon. Either party to the Contract may make written request to the Architect for such interpretations.

**2.2.9** Claims, disputes and other matters in question between the Contractor and the Owner relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Architect for decision which he will render in writing within a reasonable time.

**2.2.10** All interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. In his capacity as interpreter and judge, he will endeavor to secure faithful performance by both the Owner and the Contractor, will not

show partiality to either, and will not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

**2.2.11** The Architect's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.

**2.2.12** Any claim, dispute or other matter in question between the Contractor and the Owner referred to the Architect, except those relating to artistic effect as provided in Subparagraph 2.2.11 and except those which have been waived by the making or acceptance of final payment as provided in Subparagraphs 9.9.4 and 9.9.5, shall be subject to arbitration upon the written demand of either party. However, no demand for arbitration of any such claim, dispute or other matter may be made until the earlier of (1) the date on which the Architect has rendered a written decision, or (2) the tenth day after the parties have presented their evidence to the Architect or have been given a reasonable opportunity to do so, if the Architect has not rendered his written decision by that date. When such a written decision of the Architect states (1) that the decision is final but subject to appeal, and (2) that any demand for arbitration of a claim, dispute or other matter covered by such decision must be made within thirty days after the date on which the party making the demand receives the written decision, failure to demand arbitration within said thirty days' period will result in the Architect's decision becoming final and binding upon the Owner and the Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede any arbitration proceedings unless the decision is acceptable to all parties concerned.

**2.2.13** The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.2 whether or not such Work be then fabricated, installed or completed. However, neither the Architect's authority to act under this Subparagraph 2.2.13, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

**2.2.14** The Architect will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**2.2.15** The Architect will prepare Change Orders in accordance with Article 12, and will have authority to order minor changes in the Work as provided in Subparagraph 12.4.1.

2.2.16 The Architect will conduct inspections to determine the dates of Substantial Completion and final completion, will receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 9.9.

2.2.17 If the Owner and Architect agree, the Architect will provide one or more Project Representatives to assist the Architect in carrying out his responsibilities at the site. The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.

2.2.18 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction as set forth in the Contract Documents will not be modified or extended without written consent of the Owner, the Contractor and the Architect.

2.2.19 In case of the termination of the employment of the Architect, the Owner shall appoint an architect against whom the Contractor makes no reasonable objection whose status under the Contract Documents shall be that of the former architect. Any dispute in connection with such appointment shall be subject to arbitration.

### **ARTICLE 3**

#### **OWNER**

##### **3.1 DEFINITION**

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or his authorized representative.

##### **3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

3.2.1 The Owner shall, at the request of the Contractor, at the time of execution of the Owner-Contractor Agreement, furnish to the Contractor reasonable evidence that he has made financial arrangements to fulfill his obligations under the Contract. Unless such reasonable evidence is furnished, the Contractor is not required to execute the Owner-Contractor Agreement or to commence the Work.

3.2.2 The Owner shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

3.2.3 Except as provided in Subparagraph 4.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

3.2.6 The Owner shall forward all instructions to the Contractor through the Architect.

3.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11 respectively.

##### **3.3 OWNER'S RIGHT TO STOP THE WORK**

3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2 or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

##### **3.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after seven days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of the Architect. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

### **ARTICLE 4**

#### **CONTRACTOR**

##### **4.1 DEFINITION**

4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

##### **4.2 REVIEW OF CONTRACT DOCUMENTS**

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Architect any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or



the Architect for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

#### **4.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**4.3.1** The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

**4.3.2** The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor.

**4.3.3** The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Architect in his administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 7.7 by persons other than the Contractor.

#### **4.4 LABOR AND MATERIALS**

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

**4.4.2** The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

#### **4.5 WARRANTY**

**4.5.1** The Contractor warrants to the Owner and the Architect that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2.

#### **4.6 TAXES**

**4.6.1** The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

#### **4.7 PERMITS, FEES AND NOTICES**

**4.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and for all other permits and governmental

fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received.

**4.7.2** The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

**4.7.3** It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Architect in writing, and any necessary changes shall be accomplished by appropriate Modification.

**4.7.4** If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

#### **4.8 ALLOWANCES**

**4.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

**4.8.2** Unless otherwise provided in the Contract Documents:

- 1** these allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes;
- 2** the Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance;
- 3** whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

#### **4.9 SUPERINTENDENT**

**4.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

#### **4.10 PROGRESS SCHEDULE**

**4.10.1** The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information an estimated progress sched-

ule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

#### 4.11 DOCUMENTS AND SAMPLES AT THE SITE

4.11.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Architect and shall be delivered to him for the Owner upon completion of the Work.

#### 4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

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

4.12.4 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

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

4.12.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.14 unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Architect's approval thereof.

4.12.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Architect on previous submittals.

4.12.8 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Architect as provided in Subparagraph 2.2.14. All such

portions of the Work shall be in accordance with approved submittals.

#### 4.13 USE OF SITE

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

#### 4.14 CUTTING AND PATCHING OF WORK

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

4.14.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor his consent to cutting or otherwise altering the Work.

#### 4.15 CLEANING UP

4.15.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

4.15.2 If the Contractor fails to clean up at the completion of the Work, the Owner may do so as provided in Paragraph 3.4 and the cost thereof shall be charged to the Contractor.

#### 4.16 COMMUNICATIONS

4.16.1 The Contractor shall forward all communications to the Owner through the Architect.

#### 4.17 ROYALTIES AND PATENTS

4.17.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Architect.

#### 4.18 INDEMNIFICATION

4.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Architect and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom,



and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 4.18.

**4.18.2** In any and all claims against the Owner or the Architect or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

**4.18.3** The obligations of the Contractor under this Paragraph 4.18 shall not extend to the liability of the Architect, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

## **ARTICLE 5**

### **SUBCONTRACTORS**

#### **5.1 DEFINITION**

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

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

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

**5.2.1** Unless otherwise required by the Contract Documents or the Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner and the Architect in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any

such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

**5.2.2** The Contractor shall not contract with any such proposed person or entity to whom the Owner or the Architect has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

**5.2.3** If the Owner or the Architect has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Owner or the Architect has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsibly in submitting names as required by Subparagraph 5.2.1.

**5.2.4** The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

#### **5.3 SUBCONTRACTUAL RELATIONS**

**5.3.1** By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and the Architect. Said agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractors.

## **ARTICLE 6**

### **WORK BY OWNER OR BY SEPARATE CONTRACTORS**

#### **6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS**

**6.1.1** The Owner reserves the right to perform work related to the Project with his own forces, and to award

separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.

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

**6.1.3** The Owner will provide for the coordination of the work of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

## **6.2 MUTUAL RESPONSIBILITY**

**6.2.1** The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

**6.2.2** If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Architect any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor, so to report shall constitute an acceptance of the Owner's or separate contractors' work as fit and proper to receive his Work, except as to defects which may subsequently become apparent in such work by others.

**6.2.3** Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

**6.2.4** Should the Contractor wrongfully cause damage to the work or property of the Owner, or to other work on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5.

**6.2.5** Should the Contractor wrongfully cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Owner's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

## **6.3 OWNER'S RIGHT TO CLEAN UP**

**6.3.1** If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.15, the Owner may clean up

and charge the cost thereof to the contractors responsible therefor as the Architect shall determine to be just.

# **ARTICLE 7**

## **MISCELLANEOUS PROVISIONS**

### **7.1 GOVERNING LAW**

**7.1.1** The Contract shall be governed by the law of the place where the Project is located.

### **7.2 SUCCESSORS AND ASSIGNS**

**7.2.1** The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

### **7.3 WRITTEN NOTICE**

**7.3.1** Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

### **7.4 CLAIMS FOR DAMAGES**

**7.4.1** Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

### **7.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND**

**7.5.1** The Owner shall have the right to require the Contractor to furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder if and as required in the Bidding Documents or in the Contract Documents.

### **7.6 RIGHTS AND REMEDIES**

**7.6.1** The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

**7.6.2** No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.